

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-6104

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 77-6104

B
P/S

ALFRED KIRSHNER
98 Van Cortlandt Park South
Bronx, New York 10463
Phone: 212 543 9038

Plaintiff-Pro Se
Appellant

APPENDIX
EXHIBITS
PLAINTIFF-APPELLANT

VS

UNITED STATES OF AMERICA
SECRETARY OF THE TREASURY
COMMISSIONER OF I.R.S.

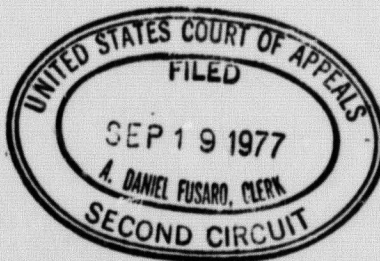
ALVIN D. LURIE in his capacity
as Asst. Commissioner
Employer Plans & Exempt
Organizations, I.R.S.
c/o U.S. Attorney Civil Division
1 St. Andrews Plaza, 5th Floor
New York, New York

BERNARD GOLDBERG
REUBEN MITCHELL
JOSEPH SHANNON
ROBERT CHRISTEN
VICTOR CONDELLO
HARRISON GOLDIN
JAMES REGAN

Individually as Trustees of Teachers Retirement System
of City of New York, 40 Worth Street, New York, N. Y.

Isaah Robinson
110 Livingston Street, Brooklyn, New York
Individually as Former Trustee, "TRS".

Defendants-Appellees



OFFICE OF COUNSEL

77 SEP 19 P12:22

LAW
CITY OF NEW YORK

THE CITY OF NEW YORK

IDENTIFICATION NO. 13-6357165

Statement for Recipients of
Annuities, Pensions or Retired Pay **1976**

Copy B File with recipient's FEDERAL
tax return if tax was withheld

FEDERAL INCOME TAX INFORMATION

Annuity, Pension or Retired Pay			Disability Retirees under Retirement Age								
1	Federal income tax withheld	2	Gross amount of Annuity, Pension or Retired Pay 2037.18	3	Taxable amount of Annuity, Pension, or Retired Pay	4	Gross amount reportable as wages by disability retiree under retirement age	5	Amount excludable as sick pay by disability retiree under retirement age		
▼ RECIPIENT'S identifying number 130-28-5666 T 011456-0 1 0 ALFRED B KIRLHNER 98 VAN CORTLANDT PK 30 NEW YORK 62 N Y						6	State income tax withheld	7	State abbreviation	8	State code
This information is being furnished to the Internal Revenue Service and appropriate State officials. An "X" in the upper left corner indicates this is a corrected form.											

Form W-2P

Department of the Treasury—Internal Revenue Service

FUNDS OF THE TEACHERS RETIREMENT SYSTEM OF THE CITY OF NEW YORK

MONTH OF	PENSION NO.	VAR ANNUITY UNIT VALUE	VARIABLE UNITS PAYABLE	PAYMENT OF VAR ANNUITY	FIXED DOLLARS RETIREMENT ALLOWANCE	N.Y.C. SUPPL. PENSION	GROSS AMOUNT PAYABLE	LESS AUTHORIZED DEDUCTIONS			NET AMOUNT PAYABLE							
1/76	018456-0				143	4	109	15	252	99	153							\$ 251.46

KEEP THIS WHITE STUB
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DETACH WHITE STUB BEFORE CASHING

Exhibit A.

Teachers Save NYC

NEW YORK CITY — While President Ford fiddled, but others in the nation and overseas watched anxiously, teachers here snatched New York City back from the brink of a default on Oct. 16 that would have had catastrophic, worldwide economic effects.

The rescue of New York City came when the three teacher-members of the NYC Teachers' Retirement System — Bernard Goldberg, Reuben Mitchell and Joseph Shannon of the United Federation of Teachers — voted within minutes of the hour of default to agree to a \$150-million investment by the System in Big MAC bonds. That action saved the city — at least temporarily.

The teachers' agreement was a reversal of their earlier opposition to the investment. The three teacher-members had initially resisted the investment because the System had already invested \$138-million. "We were concerned," said Mitchell, "because we must watch that investments are properly diversified, that all our eggs aren't put in one basket."

The teachers reversed their position only after it became apparent that neither the federal government nor any other agencies were willing to come forward with assistance for the city, and that their votes, through circumstance, had become the deciding factor in the immediate economic fate of the city, state, and nation.

"We are angry because teachers were



UFT President Albert Shanker announces to the press that the teachers have agreed to NYC Teachers' Retirement System investment in Big MAC bonds to save the city.
(Photo by New York Teacher staff)
Caricature at right by UFT member Frank Cariello.

singled out for this money," UFT President Albert Shanker told reporters. "It was blackmail, but the price if we had not acceded would have been the destruction of the city."

Their agreement to the investment enabled the state's Emergency Finan-

cial Control Board to round out, at the very last minute, a \$443-million package to avert default. Without the \$150-million from the teachers' pension fund, New York City would have gone under at 3 p.m., setting off an economic chain of events that many observers say would have produced worldwide recession or depression.

And Ford Fiddled



the city, that President Ford ~~was~~ other "wake up" call.

The UFT and AFT presid- ed that the teachers' rescue city "only temporarily saves New York from disaster." Shanker said "city will go under in December" less there is congressional

Shanker praised New York

Protection in Writing

RESOLVED that the Municipal Assistance Corporation will make no further requests of the New York City Teachers Retirement System for purchase of Municipal Assistance Corporation bonds in excess of a total of \$200,000,000 subsequent to September 1, 1975 and that the Chairman of the Municipal Assistance Corporation is requested to make known to any other agency or authority requesting investments in securities dependent on New York City or New York State revenues that the Teachers Retirement System has made a full and significant commitment in such securities and that this should be taken into account with respect to any such requests.

Oct 17, 1975
 T. L. [unclear]
 [unclear]

OCTOBER 26, 1975 N.Y. Teacher.

worldwide recession or depression.

A central figure on Oct. 16, as the world watched the city move hour by hour toward apparent default, was President Shanker, whose recommendations were pivotal in the decisions made by Goldberg, Mitchell and Shannon.

Shanker backed the initial decision by the three teacher-members of the Retirement Board to oppose the investment. He noted that the System had already invested \$138-million in Big MAC bonds, and that the Emergency Financial Control Board was exercising "little more than extortion" in its last-minute prejudgment that teachers alone could save the city.

The UFT president, in meetings during the day with Governor Carey, urged that Big MAC find other investment sources, and that the city press the federal government for intervention.

A morning call to the White House by Mayor Abraham Beame fell on deaf (sleeping) ears. A White House spokesman said President Ford was asleep and that he would be informed of the New York City crisis when he awakened. After Ford got up, he met with his economic advisers, but proffered no aid — nor even words of encouragement — to the sinking city and its more than eight million citizens.

Shanker told reporters later in the day, after the teacher-members had reversed their position in order to save

Shanker praised New York City teachers for their action in stepping forward to save the city. "In their city's hour of greatest need," he wrote in his Sunday *New York Times* article (see page 9), "teachers stepped forward when no one else would. They resisted the normal human instinct to slash back at those who had torn into them."

The UFT president added that "in the end, teachers displayed more civic responsibility than the governor, the mayor, the bankers, the whole Control Board, or anybody else."

Shanker said that the teachers' decision had averted "economic, social and political catastrophe. In defaulting, the city would have dragged with it hundreds of city and state governments and school systems, and thousands of private concerns throughout the United States, and overseas as well."

Noting that the NYC Teachers' Retirement System now has a commitment in writing that there will be no more requests for money from the System (at left), Shanker said, "As Washington was the ultimate cause of the city's troubles, it must now be the ultimate savior. Teachers will give no more of their pension monies, and we have a commitment that we will not be asked to. If the city's travails are finally to be over, and the nation spared the trauma its fall would induce, Washington must act without delay."

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Unions and Banks Will Get Role in Governing of City

11-19-76

By JOHN DARTON

Governor Carey has agreed to grant municipal unions and local banks a voice in governing the city, by expanding the seven-member Emergency Financial Control Board to provide a seat for each of those groups, Felix G. Rohatyn said yesterday. Officials in the Governor's office confirmed the statement.

At the same time, the Municipal Assistance Corporation, of which Mr. Rohatyn is chairman, has agreed to fill a current vacancy among its nine members with a union representative.

The arrangements would give the city's unions a strong say on the two most important agencies set up to wield new power because of the city's fiscal crisis.

Especially important from the union point of view is membership on the Emergency Control Board. Legislation to provide

Federal loan guarantees has just been redrawn in Washington to transfer the power to renegotiate labor contracts and pensions from a proposed Federal board to the state board.

The agreement on union representation was reached during negotiations last week in which the unions agreed to provide \$2.5 billion from their pension funds as part of the \$6.6 billion financial package to provide cash for New York City over the next three years.

"It just seemed to us that the unions, in terms of their fiduciary responsibility, should have representation of the various bodies where policy decisions are made," said Mr. Rohatyn.

He pointed out that the unions had agreed, in addition to buying \$2.5 billion in new securities, to renew on a long-

Continued on Page 48, Column 7

Continued From Page 1, Col. 7

term basis the \$1.2 billion in city and M.A.C. paper they now hold. He said that such an investment would be almost as great as that of the "Federal Government and the banks combined." (The banks have agreed to extend \$1.6 billion in city and M.A.C. securities, and the Federal Government is considering \$2.5 billion in guarantees.)

Expansion of the state control board to nine members would require new legislation from the special session now meeting in Albany. Such a bill, according to sources, has not yet been drawn up but will be.

Victor Gotbaum, executive director of District Council 37, a American Federation of State, County and Municipal Employees, and Albert Shanker, president of the United Federation of Teachers, have held preliminary talks on who should be chosen as the labor representative.

REPUBLICANS TERM FORD SYMPATHETIC TO SOME CITY HELP

House G.O.P. Members Told He Would Consider It if Carey Plan Is Passed

DEMOCRATS DELAY BILL

Bankruptcy Measure Goes to Floor—City and State Lack Cash for Next Week

By MARTIN TOLCHIN

Special to The New York Times

WASHINGTON, Nov. 18—

President Ford told the New York Republican Congressional delegation today that if the Legislature took action on Governor Carey's fiscal plan, he would, in their words, "look with sympathy" toward short-term Federal assistance for New York City.

The House Democratic leadership, meanwhile, postponed floor action on legislation guaranteeing New York City notes and bonds until tomorrow, when President Ford is scheduled to announce his position publicly.

And in an effort to build support for the loan-guarantee measure, the House Judiciary Committee met in a hastily called session and unanimously approved legislation that would enable the city to petition for bankruptcy.

The Administration has indicated that it wants to wed the pending municipal bankruptcy bill to the financial assistance plan, and such bankruptcy legislation is the only kind of assistance for New York that President Ford has specifically endorsed.

The President's Stand

It is generally believed that presidential support would insure passage of a financial aid bill, while Mr. Ford's opposition would assure its defeat.

Exhibit C.

AFFIDAVIT

State of New Jersey)
County of Monmouth) SS:

Joel L. Frank residing at 35 School Road West, Township of Marlboro, County of Monmouth and State of New Jersey, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I have been a teacher for the New York City Board of Education since September, 1965.
2. I have been a member in good standing of the United Federation of Teachers (Union) since September, 1965.
3. On January 19, 1976 I mailed a letter to Mr. Albert Shanker, President of the Union (certified, return receipt requested. Copy of letter is attached to this Affidavit.)
4. Letter referred to in 3 above was never answered by Mr. Shanker.
5. At a Delegate Assembly meeting of the Union held in March, 1976 I questioned Mr. Shanker relative to the January 19, 1976 letter. Mr. Shanker responded: "You are not the Union's endorsed candidate and will not be given space in the newspaper." I thereupon told him that I was unaware of any endorsement procedure and if in fact there was one why wasn't I asked, as an announced candidate, to participate. I continued to relate to Mr. Shanker that all members of our Union who aspire to the Office of Teacher-Member of the Retirement Board should be given space in the Union's weekly newspaper, whether or not they are endorsed by the Union's leadership. He responded with "you should step aside and support Reuben Mitchell the endorsed candidate."
6. Albert Shanker by his refusal to grant me space in the newspaper had by design made it impossible for me to communicate my pension program to the 50,000 Union members and electorate of the Teachers' Retirement System. By his action he guaranteed the election of Mr. Reuben Mitchell, his personal choice.

Joel L. Frank
JOEL L. FRANK
ELIZABETH VESCATEL
NOTARY PUBLIC, State of New York
No. 41-4521488
Qualified in Queens County
Commission Expires March 30, 1978

*State of New York:
County of New York*

31st day of January, 1977

Exhibit D1.

Elizabeth Vescatel

35 School Road West
Marlboro, New Jersey 07746
January 19, 1976

Mr. Albert Shanker, President
United Federation of Teachers
250 Park Avenue South
New York, New York 10010

Dear Mr. Shanker:

On May 12, 1976 the contributors to the Teachers' Retirement System will elect a member-trustee to serve on the Teachers' Retirement Board. I am actively seeking that trusteeship.

Will all the nominees for the office be afforded equal space in the "New York Teacher" so that their views may be adequately disseminated to the contributors?

Please advise.

Very truly yours,

Joel L. Frank

JLF:nlb

Exhibit D. 2.

LENIENCY TO U.F.T. IS ASKED BY CITY

Help in Fiscal Crisis Cited
in Plea on Strike Ruling

By PRANAY GUPTA

Commending teachers for their "increased productivity and sacrifices" during New York's fiscal crisis, the city's Corporation Counsel has urged a State Supreme Court Justice in Manhattan to show leniency in dealing with the United Federation of Teachers over its five-day strike last fall.

"We have no wish to render the union penniless and powerless," the corporation counsel, W. Bernard Richland, told Justice Irving H. Saypol, who had found the U.F.T. guilty last September of violating the Taylor Law, which prohibits strikes by public employees.

The Corporation Counsel's appeal was supported by the Board of Education, which said it was "philosophically in agreement" with Mr. Richland.

Mr. Richland's statement was made last week, but Justice Saypol offered no indication as to whether he would take the city's appeal into account. Teachers who participated in the strike lost two day's salary for each of the five days that they were out.

Praise From Shanker

The corporation counsel's plea was praised last night by Albert Shanker, president of the U.F.T.

"I'm glad that the city is taking this position because our teachers have been very helpful," he said, alluding to the purchase of city bonds by the teacher's pension fund.

Mr. Shanker also noted that because of increased teacher-productivity measures, the city system would realize net savings of \$45.3 million to \$61.3 million this year and between \$27.4 million and 44.1 million next year.

The union president said he was concerned not only over the "very difficult situation" that his organization would be put in if Justice Saypol levied a stiff fine but also over the possible suspension by the state of the dues checkoff.

Such a suspension, which would be enforced by the state's Public Employment Re-

lations Board, would mean that the U.F.T. would have to collect dues individually, replacing the present system of automatic deduction from salary checks.

The state agency has the prerogative to order this sort of suspension of dues checkoff but it, too, has been asked by Mr. Richland to show "leniency."

"A plea by an employer to go easy on a striking union is somewhat unusual but not unique," Ralph Vatalaro, executive director of the state agency, said yesterday. But, like Justice Saypol, he gave no hint whether the city's appeal would be heeded.

Teachers Penalized for '75 Strike

Continued From Page 1

and meets the other stipulations regarding strike policy.

The union has no formal right of appeal before the Public Employment Relations Board, a spokesman said, although it could ask for reargument. The only other recourse the union would have in attempting to upset the ruling, he said, would be to go to the Appellate Division of State Supreme Court.

Step Was Called Serious

The seriousness of a loss of the checkoff was emphasized earlier by Mr. Shanker in an affidavit presented to the board during its consideration of the issue.

"In ordinary times," the union leader said, "the forfeiture of the union checkoff privilege for a period of several months may well constitute severe punishment. To impose such a forfeiture under the present circumstances, however, could well bring about the destruction of the union."

In its decision, the Board said that ordinarily the penalty it would impose for a third strike by employees not involved in public health or safety would be for an indefinite period, with a minimum of two years before the offending employee organization could apply for restoration of its checkoff privileges.

But the board said that it took into consideration three factors:

1. The union's responsibility, in the board's view, for the second of the three teacher strikes was diminished by reason of the "employer's acts of extreme provocation."

2. The extent of "willful" violation, in last fall's strike, although substantial, was diminished by reason of the "unprecedented financial crisis which resulted in confusion, uncertainty and frustration in the negotiations process."

3. A forfeiture of dues-deduction privileges for an extended period of time would have an "unusual harsh impact" upon the union's financial resources.

year, the board said, the employer (Board of Education) sustained a loss of about \$17,200,000 in state operating aid for the school year. The employer also sustained a loss of \$1,900,000 in connection with the school-lunch program and a loss of about \$2,600,000 for student transportation, the board said.

Mr. Shanker, in commenting on the board's decision, said that the strike took place because teachers went to school in September 1975 and found conditions under which they could not teach, and children could not learn.

"It was an attempt to call attention to savage cuts that had been imposed hastily, under the gun of default, and that affected and continue to affect the education of every child," Mr. Shanker said. "It was not a strike to make large profits for teachers but to enable them fulfill their professional responsibilities."

Some Considerations Cited

He charged that the decision ignored the fact that strike accruals (the money not spent for salaries) enabled the Board of Education to keep nearly 2,000 teachers on staff and that it ignored the fact that the Teachers Retirement System twice agreed to the investment of enormous sums of money—over \$1 billion—in Municipal Assistance Corporation bonds and city securities "to save the city."

The decision also ignored, he said, the fact that disproportionate layoffs of teachers inflicted large personal costs on the teachers affected and a loss of dues income to the union of about \$1.5 million.

"Finally," Mr. Shanker said, "it ignores the fact that a union which is expected to cooperate with its employer in emergency times has to have the resources to help its membership so that it can exercise leadership. No union can lead when its resources are curtailed and it must expend its energies on collecting dues."

Leniency Was Asked

Justice Saypol of State Supreme Court, who found the U.F.T. guilty last September of violating the Taylor Law's prohibition against strikes by public employees, has not as yet levied any penalty against the union as such. In July the city's Corporation Counsel, W. Bernard Richland, urged Judge Saypol to show leniency in dealing with the U.F.T.

"We have no wish to render the union penniless and powerless," Mr. Richland said.

Judge Saypol has not indicated whether he would take the city's appeal into consideration.

Although the board found no evidence that the strike had any adverse effect on public health or safety, it said that it did have a negative impact upon public welfare. Teaching activities were disrupted and few pupils enrolled in the New York City Public School System received any classroom instruction during the strike, the board said.

Because of the extensive absence of pupils from the schools during the five days of the strike and the resultant drop in average daily attendance for the school

Exhibit E.1.

Move by Union Follows Carey-Shanker Meeting

-Page Two-
NEW YORK TIMES
October 18, 1975

The day's ordeal, which began with the grim predawn arrival of state, M.A.C. and teachers' union aides at Mr. Carey's office, left the Governor and everyone else exhausted, but also combative. Mr. Carey, announced, along with Felix G. Rohatyn, chairman of the M.A.C., that the state and the city—and its employee-pension systems—has done all they could be expected to do to meet the city's monthly cash shortfalls after next month.

The Governor released the text of a telegram to President Ford reading, in its entirety:

"New York, by exhausting all of its resources, can meet its obligations until Dec. 1. After then, the welfare of our citizens rests in the hands of our Federal Government. I seek your cooperation and leadership."

The drive for assistance from Washington has taken the form of seeking a Federal guarantee for city or M.A.C. securities so that the city may have access to the borrowed money it needs to keep operations going while it implements a three-year program of drastic economies to eliminate its giant budget deficit.

"We need not a bailout, not a handout, but the recognition by the Federal Government that we are part of this country, and that we are suffering because of the economic distress in this country," Mr. Carey said.

But in Washington, Ron Nessen, Mr. Ford's press secretary, said the President had not

changed his feeling that such Federal assistance would be unnecessary once the city took steps on its own to cut its budget and regain solvency.

"This is not a natural disaster or an act of God," Mr. Nessen said of the city's problems. "It is a self-inflicted act by the people who have been running New York City."

Underscoring their statement that the state had run out of resources to help the city, Mr. Rohatyn and Mr. Carey said the M.A.C. would pledge not to ask the city teachers' pension system to buy any more M.A.C. bonds. This had earlier been demanded by the teachers, but rejected by Mr. Rohatyn.

Mr. Rohatyn and Mr. Carey said they did not see how they could now ask any of the other

pension systems to take on any more M.A.C. obligations—the city systems will have owned 15 per cent of M.A.C. and city securities by Nov. 30—but other aides refused to discount such requests in the future.

Despite Mr. Shanker's and Mr. Carey's denials that there had been any agreements granted the teachers union for its purchase of M.A.C. bonds, officials at City Hall said late yesterday that Mr. Shanker had won one significant concession.

The concession, the officials said, related to Mr. Shanker's contention that the teachers' contract gains were not costing the Board of Education as much as the Emergency Financial Control Board had maintained when it returned the contract to the city 10 days ago to be renegotiated. Governor Carey, they said, agreed to allow an arbitrator to determine the costs of any settlement—not the settlement itself—before eventual approval by the Emergency Control Board.

Asked to comment on these reports, Robert Laird, Mr. Carey's press secretary, said that he had checked with the Governor and that Mr. Carey had denied them. Mr. Shanker also denied them.

The events of the day were typical of the hairpin turns in the fiscal fortunes of the city in the way they were steeped in the sometimes bewildering technicalities of the world of finance.

But unlike the previous crises, the one yesterday had been brewing behind the scenes, with no public sense that any aspect of the city's financial position was in immediate jeopardy until only a couple of days ago.

As late as the day before yesterday, many of those involved in the frantic efforts of the last few months to keep the city afloat concluded that nothing serious was wrong with the elaborate plan to tide the city over its borrowing needs through Nov. 30—despite the fact that Mr. Rohatyn of the M.A.C. had been referring to the October and November financial structure as a "shaky scaffolding."

What prompted the near-collapse of that scaffolding was the decision by the Emergency Control Board—which consists of Mr. Carey, Mr. Reame, State Controller Arthur Levitt, City Controller Goldin and three gubernatorial appointees—to reject the teachers' union contract last Oct. 7 and negotiate what Mr. Carey later termed a three-year "wage deferral" for the teachers.

This move reportedly incensed the teachers, and the union found, almost by accident, that it had a weapon for retaliation.

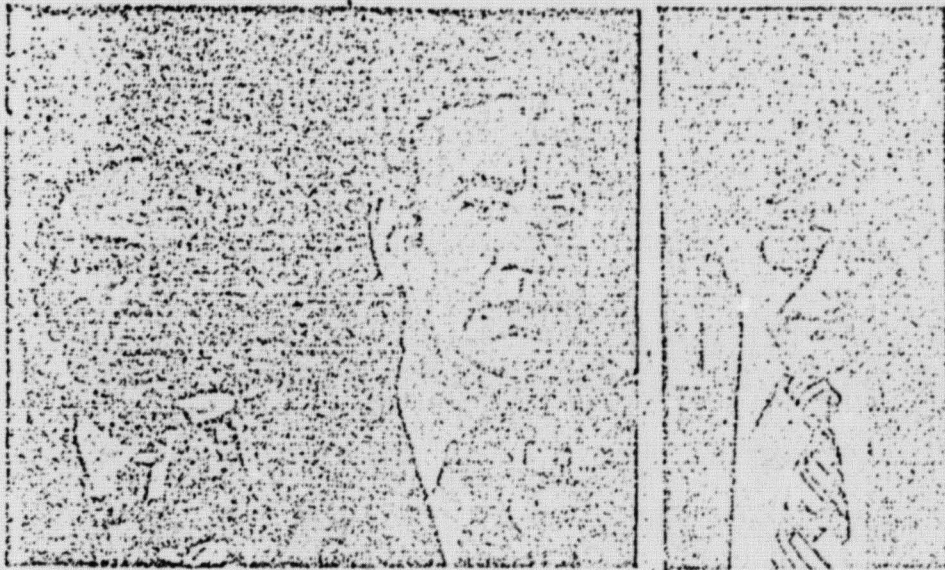
Its weapon lay in a previously voted upon "expression of intent" to purchase \$200 million worth of M.A.C. bonds to help raise the cash that the city needed through Nov. 30. However, that vote was predicated on the State Legislature's having actually ordered the trustees of both the city and state retirement systems to purchase the bonds to help the city.

Two weeks ago, however, the State Court of Appeals voided the Legislature's directive as an unconstitutional breach of the trustees' fiduciary prerogatives. Lawyers for the M.A.C. then concluded that the teachers' pension fund trustees would have to vote again on their commitment, because it had been contingent upon a now-unconstitutional mandate. It was about a week ago, officials said yesterday, that the teachers' union trustees began resisting this move.

Their resistance was never tied explicitly to demands over the teachers' contract, officials on both sides said. But one said it was conveyed vividly enough by "body language" among the trustees and suggestions between Mr. Carey and Mr. Shanker, who have known each other for years.

The trustees never took an outright vote on the matter because, according to Victor Condello, a lawyer who is the chairman of the board of trustees, a vote would have been in the negative. Finally, on Thursday, following a week of talks and contacts between Mr. Carey and Mr. Shanker, the Governor

Shank E 2



The New York Times/Teresa D'Amico

Governor Carey discussing teachers' action to help avert default by the city after Albert Shanker, right, announced that pension funds would be used for the purpose. At left, with Mr. Carey, is Felix G. Rohatyn of the Municipal Assistance Corporation.

A Night of Anxiety on Brink of Default

By LINDA GREENHOUSE

It was 1:30 yesterday morning, and in some ways the scene provided the ultimate irony in the entire fiscal crisis. For almost half a year, the most powerful politicians and some of the highest paid financial talent in the state had wrestled with the city's fiscal agonies.

And now three obscure, graying, middle-aged men—two former high school teachers and a former home-instruction teacher—seemed to hold the fate of the city in their hands.

The three were trustees of the New York City Teachers

Retirement System. Their votes, responsive to the views of union president Albert Shanker, were crucial to a commitment to furnish \$150-million in pension money the city needed to avoid default yesterday.

Twice Thursday night and early yesterday, the trustees, sitting in Governor Carey's 10th-floor office at 1350 Avenue of the Americas, had voted on the \$150-million and twice the three teacher-members had voted "no." Now they were going home, making their way uncertainly past the horde of photographers and reporters waiting

for them in the corridor, and they would promise only that they would be back at 7 A.M. to vote again.

Although the teachers number only three on the seven-member board, a valid majority must include at least one teacher-member.

Their power, as it turned out, was not as ultimate as it appeared. At precisely that moment, Richard Ravitch, the builder now acting as troubleshooter for and representative of the Governor, was meeting with Mr. Shanker, the president of the

Continued on Page 16, Column 1

Continued From Page 1, Col. 7

United Federation of Teachers, in Mr. Shanker's Manhattan apartment to try to make the case one last time on the consequences of default.

The three trustees, Reuben Mitchell, Joseph Shannon, and Bernard Goldberg, had brought the city to within hours of default, but finally pulled it back.

Yesterday afternoon, less than an hour after Mr. Shanker emerged from a meeting with the Governor and announced that he would "recommend" the investment, the three trustees changed their votes and the fragile rescue mechanism was in place once again.

The three teacher-trustees clearly did not enjoy their sudden prominence.

SHANE 3

Unions, After Aiding City Financially, Try to Avert U.S. Contract Intervention

By JOHN DARTON

In agreeing to a \$2.5 billion pension-fund investment in city securities and to increased employee contributions to the pensions, major municipal-union leaders are attempting to head off Federal legislation that could abrogate their contracts and reopen past pension settlements.

At the same time, by becoming a major source of cash that could rescue the city from default, the unions are hoping to "add teeth" to an arrangement under which the city will strive to balance its budget through attrition, instead of layoffs.

These goals were confirmed yesterday by labor leaders, trading anonymity for candor, who are still negotiating with state and fiscal officers attempting to piece together a \$6.6 billion three-year financing plan for the city.

Union leaders emphasized that their side of the agreement was contingent on materialization of the other components of the over-all financial plan. The understanding on the part of the major unions depends

on the "if money" from Albany and Washington," was the way Victor Gotbaum, executive director of District Council 37 of the America Federation of State, County and Municipal Employees, put it.

Also, agreements have apparently not yet been reached with unions representing policemen and firemen. Talks are continuing.

Negotiations on the part of the state and the Municipal Assistance Corporation are being conducted primarily through Herbert Elish, executive director of the M.A.C.

The key union participants so far have been Mr. Gotbaum, Albert Shanker, president of the United Federation of Teachers, and Jack Bigel, a union consultant.

The increased contributions from city workers to their pensions—a concession that the unions say was demanded by Washington through state in-

termediaries—will mean less take-home pay for virtually all of the city's 265,000 employees. Mr. Bigel estimates that city workers will have their annual take-home pay reduced by between 2 and 4 percent. A

supervising clerk earning \$243 a week and taking home \$186 stands to lose \$4.89; a sanitationman taking home \$220 could lose \$7.28, and a policeman taking home \$243 could lose \$7.92.

The revision in pension financing would cut in half the city's contribution under a plan called I.T.H.P., or "increased take-home pay," which began in 1960-61 under former Mayor Robert F. Wagner. Under it, instead of granting a pay increase, the city offered to pay 2½ percent of employees' salaries toward their pensions. In 1965, the city raised this to 4 and 5 percent, depending on the unions.

The cost of the plan to the city amounts to \$171 million a year. The proposed revision—cutting the city's contribution

in half—would thus save the city \$85.5 million. Under the current system, some city employees, whose certified rate for pensions falls below the city's contribution, pay nothing at all toward their pensions. Others chose the option of paying the full certified rates, so that the city's share is added on top of it.

The continuance of the take-home pay plan calls for new legislation each year. So revising the system could be accomplished much more easily than changing other aspects of pension benefits that have long been law.

Under the financing plan, the city's five pension systems, with assets totaling \$8.5 billion, would purchase about \$2.5 billion, according to the current plan, would be timed as fol-

lows: \$543 million next month and in January; \$1.4 billion over fiscal 1976-7, at \$118 million a month, and \$436 million in fiscal 1977-8, at \$38 million a month.

Mr. Bigel estimated the amount of purchases that could be made with "new money" coming into the systems at \$1.5 billion. The remainder would involve liquidating other holdings, mostly corporate bonds, in the systems' portfolios.

In addition to agreeing to purchase \$2.5 billion in city securities in the next three years, the unions have agreed to "roll over"—or extend—city notes and M.A.C. bonds in their possession. Some union sources indicated while the labor leaders were seeking what one termed "some payment."

E.H.

Ed. C. F. E. 4.

How Safe Are Our Pensions?

By REUBEN MITCHELL
Teacher-Member, New York City
Teachers' Retirement System Board

Pensioners are understandably concerned about the security of their pensions in the light of the real possibility of default and/or bankruptcy of New York City. After all, where does it leave them if the stream of monthly pension checks should be interrupted?

While some theoretically possible developments could be conjured up to bring on doomsday, the continued lifetime payments of pensions seems assured for present retirees. There have been actuarially adequate reserves set aside to provide lifetime payments to members already retired. These reserves are not city funds. They are controlled by a separate entity, the New York City Teachers' Retirement Board. These funds cannot be attached in case of city bankruptcy nor used for any other purpose than to pay benefits to members.

Of course, these funds are not stored in a mattress, but are invested for anticipated income that is part of the actuarially required amount to meet future payments. Variable funds are invested in a diversified portfolio of common stocks with fluctuating payments to participants. The fixed reserves are invested in a diversified portfolio of bonds, chiefly corporate bonds with no less than an A rating. However, some retirees are uneasy because this portfolio includes some city notes and bonds and some "Big MAC" bonds.

The conventional city notes and bonds, which not so long ago constituted the bulk of Retirement System investments and which the system kept selling off, now constitutes less than 10 percent of the portfolio. The "Big MAC" bonds are not city bonds, would not be directly affected by city bankruptcy and are secured by an apparently assured stream of revenue. "Big MAC" bonds were recently purchased because, according to widely accepted criteria, they constitute a sound investment as a small portion of the total portfolio.

The law requires New York City to make good on all investment losses. The New York State Constitution states that pensions constitute a contractual right, "the benefits of which shall not be diminished or impaired." Confidence in these "ironclad guarantees" has been recently eroded; however, weighing all factors together, there seems to be no substantial basis for fearing that pension checks will ever be discontinued or diminished for teachers now already retired.

Just to end on an ominous note, there is a "clear and present" danger to the real incomes of retirees. The danger is that inflation will cause a severe erosion of their purchasing power. Attempts to secure realistic cost-of-living adjustments have encountered insurmountable obstacles, thus far. However, a realistic concern with retirement security points to an all-out effort to achieve this end.

Teachers bail out city again

ALBANY

United Federation of Teachers, AFT Local 2, has been dubbed the "United Givers Fund" by state and city officials. In accordance with the state legislature's latest plan to avert bankruptcy and qualify for federal assistance, trustees of the United Federation of Teachers' Pension Fund agreed to buy another \$860 million worth of MAC or city bonds. The investment, to be made over the next two-and-one-half years, will bring the teachers' pension fund's long-term holdings in New York City paper up to \$1.2 billion.

Reuben Mitchell, one of the fund trustees who made the decision, said that MAC officials, who had promised last October, not to come back to the teachers' fund for more money, put the request this way: "You don't have to do it, but the alternative will be default and bankruptcy."

Mitchell indicated that the fund will have to sell off some of its corporate holdings to honor the new commitment, but the 9-percent interest rate officials have agreed to will offset initial capital losses.

Other agreements reached, safeguarding future payment of pensions, the pension fund's current and future assets, and its trustees, are these:

- Fund trustees, who under a city law are liable for damages if they do not "prudently" invest trust fund money, have been indemnified against possible lawsuits.
- A provision of the bankruptcy law has been clarified, making pension payments "an essential function" in the event of default.
- The Teachers Retirement System was declared an independent corporate body, whose assets are deemed to be held in trust for its beneficiaries. Therefore, even in the case of bankruptcy, New York City's creditors could not attach any of its funds.



Nicholas Maletta



Reuben Mitchell

Nov 2, 1975 NEW YORK TEACHER

Spilbet E.S.

Teacher

FEDERATION OF TEACHERS AFT-CIO

DECEMBER 1975/VOL. 60, NO. 4

Calculated

TABLE A-6
New York City Retirement Systems
Funding Status as of June 30, 1974

	<u>NYCERS</u>	<u>Teachers</u>	<u>Police</u>	<u>Fire</u>	<u>Bd. of Ed.</u>	<u>Total</u>
	(In Millions)					
1) Liability for retired members (5,000)	\$2,195.7	\$1,615.0	\$ 765.0	\$ 289.1	\$ 74.6	\$4,93
2) Liability for accrued benefits of active members (including vested terminations)	4,106.2	3,003.1	1,707.8	852.0	131.5	9,800
3) Total accrued liability Item 1 + Item 2	6,301.9	4,623.1	2,472.8	1,141.1	206.1	14,744
4) Assets on hand (excluding two years' appropriations due and unpaid)	2,829.2	1,854.3	1,007.5	475.8	97.6	6,264
5) Unfunded accrued liability Item 3 - Item 4	3,472.7	2,768.8	1,465.3	665.3	108.5	8,480
6) Percent of total accrued liability funded i.e. $\frac{\text{Item 4}}{\text{Item 3}} \times 100$	44.9%	40.1%	40.7%	41.7%	47.4%	42.1

NOTE: Accumulated contributions of active members are excluded from assets and liabilities figures shown in the above table.



THE CITY OF NEW YORK

MAYOR'S MANAGEMENT ADVISORY BOARD

2 WORLD TRADE CENTER, NEW YORK, N.Y. 10047 / ROOM 4579 / Telephone 488-5128

BOARD MEMBERS

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Jacob B. Ukeles, *Executive Director*

FROM: The Mayor's Management Advisory Board

TO: Mayor Beame

Last September you asked the Management Advisory Board to review the pension systems of the City of New York.

In accordance with that request, a Pension Task Force was appointed to make a thorough study, focusing on but not limited to, a realistic evaluation of the required City contribution toward funding the five basic retirement systems. We were impressed with the quality and professionalism of the Pension Task Force's study.

We have carefully reviewed the report prepared by the Task Force and we are pleased to forward it to you with our unanimous endorsement.

We have given special attention to those recommendations with respect to which there was not unanimous agreement among members of the Task Force, but in each instance we accepted the recommendations of the majority.

Much attention has been directed to the funding status of the City's pension plans and it is hoped that the actuarial studies performed by the Task Force will make a valuable contribution toward a better understanding of this matter. The Task Force viewed as its primary mission the development of a realistic cost estimate of the future financing of the retirement systems based on the latest data available; i.e., June 30, 1974. This is the data base used by the City Actuary to determine the City's contribution for the fiscal year commencing July 1, 1976. As a part of that study a comparison was made of the plan assets as of the date of the valuation, with the liabilities accrued for total future benefits, without regard for pension credits for years of service after the date of valuation. The excess of this liability over the assets is referred to as the unfunded accrued liability.

Herbert F. R.

THE TASK FORCE CHAIRMAN'S ACKNOWLEDGEMENTS

I would like to express my sincerest thanks to the members of the Pension Task Force, not only for their individual efforts and contributions to the study but also for the help of their associates, and, as I noted to Mr. Shinn, for the high degree of professionalism with which they performed their assignment. The members are:

Herman Bartimer, Actuary
Metropolitan Life Insurance Company

W. Gordon Binns, Jr., Asst. Treasurer
General Motors Corporation

Anthony J. Gajda, Vice-President
Program Planners Inc.

James B. Gardiner, Supv. Actuary
New York State Insurance Department

Jonathan Schwartz, Chief Actuary
New York City Retirement Systems

William T. Scott, Pension Consultant
United Federation of Teachers

Robert Tilove, Sr. Vice-President
Martin E. Segal & Co., Inc.

James E. Tobin, Corporate Director - Benefit Plans
Union Carbide Corporation

Leo M. Walsh, Jr., Vice-President
The Equitable Life Assurance Society of the U.S.

Max S. Weinstein, Chief Actuary
Program Planners Inc.

Staff Representatives

Arthur C. Van Houten, Office of the Comptroller
City of New York

Jacob B. Ukeles, Executive Director
Mayor's Management Advisory Board

Without their competence and constructive participation, the study could not have been completed in a highly professional manner within the time allotted.

W. S. Thomas

W. S. Thomas, Chairman
Pension Task Force

March 17, 1976

Exhibit F.3.



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
PERMANENT COMMISSION ON PUBLIC EMPLOYEE
PENSION AND RETIREMENT SYSTEMS
880 THIRD AVENUE
NEW YORK, NEW YORK 10022
PHONE 212-759-3342

OTTO KINZEL, CHAIRMAN
JOHN J. BURNS
HAROLD A. CONROY
JAMES F. MURRAY
CARL L. STEVENSON
JOSEPH G. METZ
EXECUTIVE DIRECTOR

March, 1975

To the Governor and Members of the Legislature:

Pursuant to Article 27 of the Executive Law, I am submitting this periodic report, dealing with actuarial assumptions and funding policies of the New York public employee retirement systems.

This report is the first part of a two-part report on the financing of our public retirement systems. The second part of the study will review investment policies and procedures, with a view toward improving investment performance.

Respectfully,

Exhibit G. 1.

b. The Fiscal Effects.

As may be seen from the Table which follows (Table 10), the available assets as a percentage of liabilities for active members of the New York City Employees' Retirement System was 50 percent in 1967. As of June 30, 1973, the ratio had dropped to an incredibly low 13 percent. The New York City Teachers' Retirement System's ratio for the same period dropped from 40 percent to an almost unbelievable 9 percent. By 1976, or at the very latest by 1977, there will be no assets in these systems which could be allocated to cover the liabilities for benefits already earned by active members. Indeed, the assets will be insufficient to cover the pension reserve for retirees at that time.

In such event, the Commission does not believe that the Systems can be certified as being actuarially sound.

The same fate will soon overcome the other New York City retirement systems unless action is taken now to reverse the process.

c. The New York City Fire Department Pension Fund - A Special Problem.

In addition to the general deterioration that characterizes all of the five New York City retirement systems, the Fire Department Pension Fund is confronted with an additional problem which has so jeopardized its funded status as to make it impossible for the city actuary to certify the fund as being actuarially

Exhibit 12.

TABLE 10

Assets and Liabilities of New York's Public
Employee Pension Systems

Item	Amounts in millions					
	1	2	3	4	5	6
	Total assets	Reserve for employee contributions	Reserve for retired members	Assets remaining for active members	Liability for active members	Percent of active liability funded
NYC Systems						
1. ERS						
1967	\$2,298	\$757	\$ 499	\$1,042	\$2,094	49.8%
1970	2,738	777	1,032	929	3,912	23.7
1973	3,329	732	1,991	606	4,583	13.2
2. Teachers						
1967	1,788	495	740	553	1,380	40.1
1970	2,073	493	794	786	3,277	24.0
1973	2,326	469	1,484	373	4,178	8.9
3. Police						
1967	576	131	192	254	1,118	22.7
1970	796	130	348	318	1,540	20.6
1973	1,072	145	611	316	1,987	15.9
4. Fire ¹						
1967	239	45	77	117	582	20.2
1970	342	41	140	161	760	21.2
1973	453	39	209	204	1,048	19.5
5. Board of Ed.						
1967	92	32	26	34	77	43.7
1970	106	33	38	34	141	24.4
1973	117	32	62	23	152	15.0
NYS Systems						
1. ERS						
1967 ²	2,920	714	862	1,344	4,426	30.4
1970	3,445	634	1,574	1,238	5,681	21.8
1973	5,226	570	2,271	2,385	8,493	28.1

¹This fund only covers firemen hired on or after March, 1940. Obviously, the ratio of retirees to actives will increase significantly as experience of the plan matures.

²Includes police and fire.

Continued

Exhibit 9.3.

2 Studies Conclude That New York City Should Substantially Increase Its Contributions to Pension Systems

MON STETSON

Two recent studies of the city's pension systems agree that substantially larger annual contributions are required by the city to keep the retirement programs adequately funded.

But Mayor Beame's special study panel, headed by Richard R. Shinn, president of the Metropolitan Life Insurance Company, came up with a much more favorable assessment of the pension systems than did the state's Permanent Commissioner on Public Employee Pension and Retirement Systems in earlier analyses.

In discussing the report of his panel, Mr. Shinn said that the city pension systems were in "good shape" but needed increased annual city contributions to avoid underfinancing in the future. Otto Kinzel, chairman of the state commission, contended that the city systems had received insufficient contributions in the past and were "underfunded" by \$6 billion.

The Shinn task force report took the position, however, that the systems were not necessarily underfunded as long as the city's contributions were being made in accordance with cost estimates based on realistic assumptions.

Wrong Assumptions

But the Shinn report, like the Kinzel study, concluded that the actuarial assumptions—regarding such matters as mortality, employee turnover, disability, length of service before retirement, salary rates, and interest on pension fund investments—were outmoded.

The analyses of the city pension systems and the recommendations of both Mr. Shinn and Mr. Kinzel now are before the city, the trustees of the systems and the Legislature, where some action is required if the retirement programs are to be revised and updated.

Action by the Legislature would be necessary to permit the interest rate used in evaluating pension funds to increase to 5.5 percent from 4 percent. Approval by the trustees of the retirement system would be required to adopt the revised actuarial assumptions used by the Shinn task force in its actuarial evaluation of the systems.

Legislation would also have to be passed to authorize the proposed phasing-in over a five-year period of a recommended increase of \$208 million a year in the city's contribution to the pension funds.

The later Kinzel Commission report (March 1976) reiterated its recommendation of a year earlier that "realistic actuarial assumptions" be adopted for

the New York City retirement systems. The study went on to say that it had been estimated that the five city systems had underfunded past service liabilities of \$6 billion.

"To make up for this underfunding," the report said, "contributions to the city pension systems may have to be increased as much as \$300 million a year beginning in 1978."

In a recent interview, however, Mr. Kinzel and Joseph G. Metz, executive director of the commission, gave a revised figure of \$200 million as the required annual increase in contributions—a figure approximating the one calculated by the Shinn group.

The Shinn task force computed pension costs on the basis of its own revised and updated actuarial assumptions and on the basis of 40-year funding. The cost for the five

pension systems, under their computation, would be \$1,428 million per year, or 30.7 percent of payroll, as contrasted with \$1,220 million, or 26.2 percent of payroll, as determined by the city actuary under the old assumption and present funding methods. The Shinn figure represents a projected increase in cost of \$208 million a year over a 40-year period.

In addition to the cost of these retirement systems, the city is also spending about \$200 million per year for additional pension obligations and special annuity funds. This is equal to an additional 4.3 percent of payroll, or a total city pension and annuity cost of about 35 percent of payroll. If Social Security payments of 5.85 percent are added, the overall cost of retirement benefits would be 40 percent of payroll.

The 1975 Kinzel study, making its calculations on a different basis, presented figures showing that the available assets as a percentage of liabilities for active members of the New York City Employees' Retirement System were 50 percent in 1967. But as of June 30, 1973, the Kinzel report said, the ratio had dropped to "an incredibly low 13 percent."

The ratios for the police, fire and Board of Education systems had fallen to 15.9 percent, 19.5 percent and 15 percent respectively, the report said. The New York City Teachers Retirement System's ratio dropped from 50 percent to 9

percent. The report warned that with the ratio of assets to liabilities dropping at this rate the assets would soon be insufficient to cover the pension reserve for retirees.

The explanation for the wide differences between the figures of the Kinzel report and the Shinn study, on this point, according to Mr. Metz, is that the Kinzel report combined the assets and liabilities remaining for all active members of the systems after putting aside the necessary reserve for those already retired. In the Shinn calculation, he said, the task force took into account the liability for those already retired and for only those other employees eligible to retire rather than all those active members of the respective systems.

Looking to the future, the Shinn report recommended that its proposed yearly increase of \$208 million a year in contributions be phased in over a five year period, starting July 1, 1977. The Kinzel recommendation was for an increase of \$200 million a year.

Mr. Shinn, in a letter to Mayor Beame accompanying the task force study, made a series of recommendations relative to benefits. These proposals have been challenged by Mr. Bigel and Victor Gotbaum, executive director of District Council 37 of the State, County and Municipal Employees, as improper under the mandate of the task force.

Both the Shinn letter and the Kinzel commission recommend that the Increased-Take-Home Pay program be eliminated.

Mr. Shinn also said that overtime pay should not be included in the pay base for retirement benefit determination.

E. Robert H.

under article I, section 10 of the Constitution of the United States. If this attack should be successful—and this is certainly a real possibility—the entire comprehensive plan to have New York would collapse.

Mr. President, it is startling to me, under the circumstances, that this legislation is being seriously considered by the Senate. I just cannot go along with a bill which would take \$2.3 billion of the money collected from taxpayers all over the country and lend it to New York City. I strongly urge that the bill be defeated.

Mr. PROXMIER, Mr. President, I ask unanimous consent to include in the Record a copy of the financing agreement between the 11 New York City banks, the 5 city pension funds, and the Municipal Assistance Corp.

There being no objection, the articles were ordered to be printed in the Record, as follows:

MUNICIPAL ASSISTANCE CORP.,
New York, N.Y., December 5, 1975.

Hon. WILLIAM PROXMIER,
Chairman, Committee on Banking, Housing
and Urban Affairs, U.S. Senate, Wash-
ington, D.C.

DEAR SENATOR PROXMIER: Pursuant to George Gould's letter of December 4, 1975, I am enclosing herewith a xerox copy of the restated agreement dated November 24, 1975, among Municipal Assistance Corporation for the City of New York, the New York City Clearing House Banks, New York City Pension Funds and New York City Sinking Funds. The restated agreement embodies the final terms of the understanding among the parties and is in a form suitable for insertion in the CONGRESSIONAL RECORD.

Very truly yours,

FELIX G. ROHATYN, Chairman.

Enclosure.

AMENDED AND RESTATED AGREEMENT

Agreement made as of the 26th day of November, 1975, among the Municipal Assistance Corporation For The City of New York (the "Corporation") and each of the undersigned New York City Commercial Banks (the "Banks"), New York City Pension Funds (the "Pension Funds") and the New York City Sinking Funds (the "Sinking Funds") is hereby amended and restated to provide as follows:

The Corporation is proposing to offer to exchange (the "Exchange Offer") certain of its bonds (the "MAC Bonds") for certain outstanding short-term obligations of The City of New York, listed on Schedule A attached hereto (the "City Notes").

The Governor of the State of New York on November 25, 1975 made the following public announcement:

I wish to compliment the Legislative Leaders and the members of the New York Assembly and Senate on their work today. We have met, I believe, all the conditions laid down by the President as a prerequisite to his consideration of Federal involvement in the fiscal crisis facing New York City. We fully anticipate a favorable Federal response in recognition of the unusual and difficult steps taken by the people of New York.

While these achievements are a source of great satisfaction to all of us concerned about the potential default of New York City, for the State of New York it is only the first step. I shall ask the Legislature to return to Albany on December 3 to meet the problem of the State's own budget gap and to fully dispose of that matter through legislation during this extraordinary session. I am calling upon Comptroller Arthur Levitt to certify the existence and size of the gap

on or about November 30th using the latest revenue figures available to him at that time. In addition, the Legislature will be asked to complete its work on the "moral obligation" agencies of the State—strengthening their reserves and removing those programs that will not pass the most rigorous credit test. This action is necessary to the long term build-out program that I shall then propose.

In my letter of November 14th to the Secretary of the Treasury Simon I committed myself to this legislation, program. That commitment remains.

In reliance on the foregoing announcement, each of the Banks, Pension Funds and Sinking Funds, severally and not jointly, agrees with the Corporation as follows:

1. Each of the Banks and Pension Funds hereby agrees, severally and not jointly, not to tender or otherwise accept any offer for exchange of any City Notes held by it for MAC Bonds pursuant to the Exchange Offer. Each of the Banks and Pension Funds understands that, as a result of its not tendering or otherwise accepting any offer for exchange for its City Notes pursuant to the Exchange Offer, under the provisions of the New York State Emergency Moratorium Act for the City of New York enacted by the State Legislature at an extraordinary session and signed by the Governor on November 15, 1975 (the "Moratorium Act"), its City Notes will be subject to the moratorium therein provided for (the "Moratorium").

2. Notwithstanding any determination by any court of competent jurisdiction or by the State Legislature, which determination is applicable generally to all City Notes subject to the Moratorium and is not by its specific terms made applicable to the Banks or Pension Funds, that results in an increase in the rate of interest paid upon City Notes subject to the Moratorium (but does not affect the validity of the Moratorium on payment of principal), each of the Banks and Pension Funds hereby agrees that, after the scheduled date of maturity thereof, no interest need be paid on City Notes held by it subject to the Moratorium in excess of a rate of 6% a year.

3. Each of the Banks and Pension Funds hereby agrees (A) at the termination of the "moratorium period" under the Moratorium Act and any renewal or extension thereof to do one of the following: (i) to exchange City Notes held by it on the date hereof for short-term notes of the City, to renew such City Notes or to purchase short-term notes of the City, in each case such renewed City Notes or such short-term notes of the City to bear interest at the rate of 6% a year and to be in a principal amount equal to the principal amount of City Notes held by it on the date hereof, or (ii) to agree to present City Notes held by it on the date hereof for payment (or, if the City so agrees, to defer contractually the maturity of such City Notes) at such times and in such amounts as to result in a reduction of original principal amount in accordance with the schedule of reduction provided in clause (b) hereof, such City Notes to bear interest at the rate of 6% a year subsequent to their original stated maturity, and (b) thereafter, upon an election under clause (a) (i) having been made, from time to time upon the maturities of any such notes held or acquired pursuant thereto, to renew such notes, or to exchange such notes for or to purchase short-term notes of the City, in each case such renewed notes or such short-term notes of the City to bear interest at the rate of 6% a year, and to be in a principal amount which shall be reduced annually, beginning with the first such exchange, renewal or purchase under this clause (b) by an amount equal to the fraction (not to exceed 4/10th) of the original principal amount of its City Notes of which the numerator is four and the denominator is the number of full three month

periods remaining from the end of the Moratorium or any renewal or extension thereof to July 1, 1986; provided, however, that the foregoing obligations shall be subject to the performance or fulfillment of the following conditions: (A) the final maturity date of any note of the City referred to above shall not be later than July 1, 1986; (B) the City timely pays (i) interest at maturity with respect to the City Notes, at their respective stated rates to their respective scheduled dates of maturity, and thereafter interest at least annually at the rate of 6% a year and (ii) interest at maturity with respect to such short-term notes at the rate of 6% a year; (C) at the time of any exchange, renewal or purchase of such short-term notes or renewal of City Notes hereunder the City shall have timely paid when due principal and interest on all bonds of the City outstanding at such time; (D) at the time of an exchange, renewal or purchase of such short-term notes or renewal of City Notes hereunder the City shall not be under the jurisdiction of any court pursuant to any proceedings under the federal bankruptcy law or Title 6-A of the Local Finance Law (or any statute analogous in purpose or effect to any such law or to such Law); (E) at the time of any exchange, renewal or purchase of such short-term notes or renewal of City Notes hereunder there shall be delivered and for the benefit of the exchanging or renewing holders or purchasers or unqualified approving opinion as to legality from recognized bond counsel and such other documents as counsel for the Banks and the Pension Funds shall reasonably request in form and substance satisfactory to such counsel; (F) at the time of any exchange, renewal or purchase of such short-term notes or renewal of City Notes hereunder the Mayor and the Comptroller of the City of New York and the New York State Emergency Financial Control Board if such Board is then in existence shall have certified that the budget of New York City for the fiscal year of New York City which such exchange, renewal or purchase occurs is balanced; and (G) at the time any exchange, renewal or purchase of any short-term notes or renewal of City Notes no other party to this Agreement shall be in breach of any provision hereof. If at a time any option to exchange, renew or purchase short-term notes pursuant to paragraph 3 could not be effected by reason of the non-satisfaction of any condition specified in clauses (B) through (G) hereof, the City Notes retained pursuant to paragraph 3(a) (ii) may be presented for payment in full.

4. The Sinking Funds hereby represent that the only short-term notes of the City held by them are bond anticipation notes dated January 13, 1975, and maturing January 13, 1978, in aggregate principal amount of \$200,000,000 (the "Sinking Fund BANs"). The Sinking Funds hereby agree to purchase serial bonds of the City, bearing interest at the rate of 6% a year, in aggregate principal amount of \$200,000,000 upon or in payment of the Sinking Fund BANs. The bonds purchased by the Sinking Funds shall mature and be subject to payment of annual installments of principal as shall be necessary, after first taking into account other holdings of the Sinking Funds, to meet the legal obligations of the Sinking Funds.

5. (a) Each of the Banks hereby agrees with respect to bonds of the Corporation held by it which are listed on the schedule furnished by it to the Corporation prior to its execution of this Agreement and identified as its schedule referred to in this paragraph and which bonds consist of Series C, D, E II or J Bonds of the Corporation (hereafter called "Bank Bonds"), and each of the Pension Funds and Sinking Funds may at its election with respect to any of the bonds of the Corporation it holds (hereinafter called

Exhibit I.1.

"Fund Bonds") that commencing February 1, 1976 (i) such Bank Series Bonds and such Fund Bonds will, notwithstanding the terms thereof, bear interest at the rate of 6% a year payable on February 1 and August 1 in each year; (ii) each such Bank Series Bond and Fund Bond will mature on February 1, 1986, subject to redemption, in part, on February 1, in each of the years 1977 through 1985 in the respective principal amounts calculated to provide for level debt service on such Bank Series Bond and Fund Bond held by it to February 1, 1986; (iii) such Bank Series Bonds and Fund Bonds will be stamped by such holder with a stamp reading: "Principal of and Interest on this Bond are payable in accordance with an Agreement dated as of the 26th day of November, 1975 among the Municipal Assistance Corporation for The City of New York and certain Pension Funds, Sinking Funds and Banks"; (iv) no such Bank Series Bond and Fund Bond will be transferred, assigned or delivered by such holder unless the same is first exchanged for a newly issued bond of the Corporation, in an amount equal to the unpaid principal amount of such exchanged Bank Series Bond and Fund Bond which newly issued bond shall be issued pursuant to the first General Bond Resolution of the Corporation dated July 2, 1975 and shall bear interest and mature (subject to redemption in accordance with the first General Bond Resolution) as hereinabove provided in this paragraph.

(b) Each of the Banks, Pension Funds and Sinking Funds hereby agrees to exchange on February 1, 1976, in the case Banks, Series A and B bonds of the Corporation, in an amount at least equal to the amount of Series A and B bonds listed on the above-referred to schedule by such Bank and, in the case of such Funds, bonds of the Corporation equal to the amount of bonds of the Corporation that were heretofore purchased by such Funds from the Corporation less Fund Bonds with respect to which an election has been made under clause (a) above, for newly issued bonds of the Corporation issued pursuant to the first General Bond Resolution of the Corporation, dated July 2, 1975, bearing interest at the rate of 6% a year and maturing on February 1, 1986, subject to mandatory sinking fund payments calculated to provide for level debt service from February 1, 1977 to February 1, 1986; provided, however, that if prior to February 1, 1976 the consent of the requisite holders of Series A or B bondholders in the case of the Series A or Series B Bonds, respectively, of the Corporation is obtained to a revised amortization schedule for either or both such Series held by the Banks (the Corporation agreeing to solicit such consents) resulting in a maturity on February 1, 1986 and mandatory sinking fund payments calculated to provide for level debt service from February 1, 1977 to February 1, 1986, such bonds so held by the Banks shall be treated in the same manner as in the case of and for purposes of this Paragraph 5, shall be deemed to be Bank Series Bonds; provided, further, however, that if in the case of the Series A term bonds such consent is not obtained prior to February 1, 1976, each Bank, unless, prior to August 1, 1976, it effects the exchange required by this clause (b) with respect to the Series A term bonds, shall continue to hold its Series A term bonds, and hereby agrees to a reduction of the interest rate on the Series A term bonds held by it to 6% per annum, commencing February 1, 1976, payable February 1 and August 1 in each year, and may not otherwise elect to modify the sinking fund or redemption provision of such bonds.

(c) The Corporation hereby agrees not to issue any new bonds of the Corporation based upon debt service existing to the Corporation resulting from the operation of this Paragraph 5.

(d) Notwithstanding anything to the contrary in this Paragraph 5, the undertaking of each such holder under this paragraph will be subject to the following: (A) the Corporation shall adopt a Series Bond Resolution and take such other steps on or before February 1, 1976 to permit the transactions provided for in clauses (a) and (b) above; (B) the Corporation shall have paid interest on the bonds held by such holder on February 1, 1976 at the respective rates of interest stated in such bonds; (C) on February 1, 1976, the city shall not be in default in the payment of the principal of or interest on any debt obligations of the City; (D) there shall be no failure of any condition (which has not been waived) to the performance of any obligation of the Pension Funds under Paragraph 7; and (E) there shall be delivered to and for the benefit of holders of bonds of the Corporation affected by this paragraph 5 an unqualified approving opinion as to legality from recognized bond counsel and such other documents as counsel for such holders shall reasonably request in form and substance satisfactory to such counsel.

6. Each of the agreements referred to in Paragraphs 3 and 5 is subject to agreement to and fulfillment of such agreements by all other parties referred to in such Paragraphs 3 and 5 and to enactment prior to February 1, 1976 of Federal Legislation that would provide, by way of guarantees or otherwise, for the seasonal financing needs of the City, over the period from the effective date thereof through a date not earlier than June 30, 1978, in a maximum amount of not less than \$2,300,000,000 at any time outstanding.

7. The Pension Funds hereby agree, severally and not jointly, to purchase serial bonds of the City, substantially in the proportions set out in Schedule B, in the principal amount of \$2,530,000,000 as follows:

(a) Prior to January 1, 1976, \$30,000,000 serial bonds of City bearing interest at the rate of 6% a year and maturing on such date or dates as shall be mutually agreed upon; (it being understood that urban renewal notes of the City in the amount of \$30,000,000, dated April 18, 1975 and maturing December 18, 1978, and held by the Pension Funds, are to be paid with proceeds of federal grant funds segregated therefor);

(b) As soon as possible but prior to June 30, 1976, up to \$500,000,000 serial bonds of the City; during the 1976-1977 fiscal year of the City up to \$1,500,000,000 principal amount of serial bonds of the City; during the 1977-1978 fiscal year of the City of \$500,000,000 principal amount of serial bonds of the City; all such bonds shall bear interest at the rate of 9% a year and shall mature on such date or dates as shall be mutually agreed upon;

(c) To the extent the City is required by law to amortize, prior to June 30, 1978, any principal of the bonds of the City purchased by the Pension Funds pursuant to this Paragraph 7, the Pension Funds agree to purchase additional serial bonds of the City in an amount equal to such principal amortization and bearing interest at the rate of 9% a year and maturing on such date or dates as shall be mutually agreed upon;

(d) Any Pension Fund may, at its election, purchase MAC Bonds (issued pursuant to its second General Bond Resolution), up to an amount equal to its proportionate share of the difference between \$1,600,175,000 and the principal amount of MAC Bonds issued pursuant to the Exchange Offer, in fulfillment of its obligation to purchase an equal amount of bonds of the City pursuant to this Paragraph 7, and any such MAC Bonds, so purchased shall bear interest at the rate of 8% a year and mature July 1, 1988, subject to mandatory sinking fund payments calculated to provide for level debt service to July 1, 1986;

(e) The obligations of the Pension Funds to purchase bonds pursuant to this Paragraph 7 shall be subject to agreement to and

fulfillment of such agreements by all parties referred to in this Paragraph 7 and shall be conditioned upon each of the following facts being true on the date of each such purchase: (i) the City shall have timely paid when due principal and interest on all bonds of the City outstanding at such time, (ii) the City shall not be under the jurisdiction of any court pursuant to any proceedings under the federal bankruptcy laws or pursuant to title 6A of the Local Finance Law (or any statute analogous in purpose or effect to any such laws or such Law), (iii) a State law containing provisions with respect to the legal status of the Pension Funds and their Trustees' responsibilities, satisfactory to such Trustees, shall have been enacted and shall be effective, (iv) the City shall have made to the Pension Funds all contributions and other payments required by law, (v) the City shall, in conjunction with each purchase prior to February 1, 1976, or the first date on which the first seasonal financing moneys have been received by the City pursuant to the Federal Legislation referred to in Paragraph 6 (whichever is earlier), deliver to any Pension Fund so requesting a report of essential facts of the City in the form promulgated by the State Department of Audit & Control, and in connection with each purchase thereafter shall deliver to any Pension Fund so requesting an official statement with respect to the City in form and substance satisfactory to the Trustees of the Pension Funds, each of which shall include a current status of the City's financial plan as required and approved by the Emergency Financial Control Board, (vi) the Internal Revenue Service shall have ruled or the Congress of the United States shall have provided, that such purchases of obligations by the Pension Funds pursuant to this Agreement shall not constitute prohibited transactions or otherwise adversely affect the qualified status of the Pension Funds for the purposes of the Internal Revenue Code of 1954, as amended, (vii) the Federal Legislation referred to in Paragraph 6 above shall have been enacted and shall be in force, (viii) at the time of any such purchase, there shall have been delivered to and for the benefit of each Pension Fund an unqualified approving opinion as to legality from recognized bond counsel and such other documents as counsel for the Pension Funds shall reasonably request in form and substance satisfactory to such counsel, and (ix) no other party to this Agreement shall be in breach of any provision hereof.

(f) If any of the Pension Funds elects not to make any purchases of bonds of the City as a result of a failure of any conditions set forth in clause (v), (vi) or (vii) of Paragraph 7(e), such Pension Fund shall nevertheless, as soon as possible but prior to June 30, 1976, purchase its proportionate share of \$500,000,000 of MAC Bonds pursuant to Paragraph 7(d) above provided that the President of the United States has announced publicly that he will support or not veto the Federal legislation referred to in Paragraph 6 above.

8. This Agreement shall become effective upon its execution by the Corporation and by each of the Banks Pension Funds and Sinking Funds.

9. Any reference herein to "City Notes held" or "short-term notes of the City held" by a Bank shall refer only to City Notes or short-term notes of the City, respectively, owned by such Bank for its own account.

10. Any Bank or Pension Fund which is the holder of a City Note subject to Paragraph 3(a)(ii) hereof may sell, assign or transfer any such Note provided that the transferee shall be satisfactory to the City and shall have agreed in writing in form and substance satisfactory to the City to exercise the same options and on the same terms and conditions as the Bank or Pension Fund so selling, assigning or transferring

E. L. H. I.

such Note has agreed to exercise under Paragraph 3.

11. No waiver by a party hereto of any provision of this Agreement shall operate as a waiver by such waiving party of any other provision hereof, and then such waiver shall be effective only in the instance and for the purpose for which it was expressed to be given.

In Witness Whereof, each of the parties has caused this instrument to be executed by its duly authorized officer as of the date first above written.

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK, BY GEORGE D. GOULD,

Chairman, Finance Committee.

BANKS

First National City Bank, by Walter Wriston; Bankers Trust Company, by John Hampton; United States Trust Company of New York, by Edwin A. Heard; the Chase Manhattan Bank, N.A., by W. C. Butcher; Marine Midland Bank—New York, by Francis Murphy; National Bank of North America, by G. P. Matson; Morgan Guaranty Trust Company of New York, by Ellmore C. Patterson; Irving Trust Company, by John Rice; the Bank of New York, by Elliott Aseretti; Manufacturers Hanover Trust Company, by Gabriel Hauge; Chemical Bank, by Donald Platten.

PENSION FUNDS

New York City Employees' Retirement System, by Thomas F. Roche; Board of Education Retirement System for the City of New York, by Isalah Robinson; New York City Fire Department Pension Fund, Article 1-B, by Stephen J. Murphy; Teachers' Retirement System for the City of New York, by Victor P. Condello; New York City Police Pension Fund, Article 2, by Dan O'Neal Vono.

SINKING FUNDS

Sinking Fund of the City of New York, by William T. Scott; Rapid Transit Sinking Fund of the City of New York, by William T. Scott; Water Sinking Fund of the City of New York, by William T. Scott; Transit Unification Sinking Fund of the City of New York, by William T. Scott.

SCHEDULE A

(Amounts in millions)

Type	Amount	Date of Issue	Date of Maturity
R.A.N.	\$400.0	12/13/74	12/11/75
R.A.N.	600.0	1/13/75	1/12/76
R.A.N.	120.0	1/13/75	1/12/76
R.A.N.	200.0	2/14/75	2/13/76
B.A.N.	341.270	3/14/75	3/12/76
B.A.N.	150.0	3/14/75	3/12/76
B.A.N.	220.0	6/30/75	5/28/76
T.A.N.	90.0	6/11/75	6/10/76
T.A.N.	190.0	6/11/75	6/10/76
B.A.N.	51.3	6/11/75	6/11/76
B.A.N.	250.0	10/17/75	10/1/76
B.A.N.	59.875	10/17/75	10/15/76
R.A.N.	6.750	11/10/75	11/9/76

SCHEDULE B

(Amounts in millions)

New York City Employees' Retirement System.....	\$1,175
Teachers' Retirement System for The City of New York.....	860
New York City Police Pension Fund, Article 2.....	365
New York City Fire Department Pension Fund, Article 1-B.....	60
Board of Education Retirement System for The City of New York.....	60
	\$2,520

The Pension Funds existing the urban renewal notes referred to in Paragraph 7(a) shall purchase an additional \$300,000,000 of bonds of the City pursuant to such Paragraph 7(a) (in proportion to their holdings of such urban renewal notes).

ASSISTANCE TO NEW YORK CITY

Mr. CHILDS. Mr. President, today I must decide on the President's bill to assist New York City. The issues do not seem to get any easier to deal with. I have repeatedly said I was against a New York bailout and I still am. I also said that when and if New York took those hard steps to free themselves from the problems that were causing them to sink as their high labor force—pension requirements, health and welfare programs, and so forth, then I felt the Federal Government should lend its assistance to help them reestablish their credit.

Now I must look at what New York City and the State of New York have done to rectify their problems and determine if the plan proposed by the President is proper.

New York City has raised taxes, imposed a limited wage freeze on city employees, and increased the employee share of contributions to pension funds. The city has laid off about 22,000 workers and anticipates cutting an additional 40,000 over the next 2 years. The transit fare has been raised from 35 to 50 cents.

For its part New York State has made repeated financial commitments to New York City since last spring. The State adopted a measure mandating the city to balance its budget in the fiscal year 1978. The State Legislature established an Emergency Financial Control Board which has approved the city's 3-year plan for balancing the budget by fiscal year 1978 and cut almost \$400 million out of the city's capital budget for the 3-year period.

The President has stipulated in his legislation that New York must repay the Federal Government each year by the end of the year before a new advance would be granted. The President's bill provides the Secretary of the Treasury with the power to set whatever terms and conditions he deems necessary to insure the annual repayment of Federal loans.

This week I wrote to Dr. Arthur Burns who earlier opposed a bailout and asked him his opinion. In his reply he made a number of points I found persuasive. Of the actions taken thus far, Dr. Burns said:

The planned extensions in maturity and reductions in debt service constitute a desirable and necessary adjustment, probably fully as great as could have been realized in the formal process of bankruptcy and adjudication by the Courts.

He goes on to say that:

Despite these very considerable accomplishments, it is still abundantly evident that the City cannot return to the financial markets for additional credit at this time.

Dr. Burns concludes that:

In the absence of access to any alternative seasonal credit accommodation, the City would have no option except to default on its obligations, with all that this might imply for investor confidence and the stability of our nation's financial markets. On balance, I am prepared to endorse the President's recommendation for United Federal

assistance, on the fully circumscribed terms that have been proposed.

I agree but not without some misgivings. The President acted wisely. He had stand forced New York City and the State to make major steps toward a solution to their problems. There are continuing steps that must be taken, but this bill gives the leverage to the Secretary of the Treasury to require them to continue or the funds will be cut off.

As Dr. Burns pointed out:

The will of the governing officials of the City and State of New York to deal effectively with the City's financial problem has strengthened greatly as they have come to recognize the grave implications of New York's financial situation. This positive attitude was hardly in evidence last spring and summer.

Few people thought that New York would actually be able to lay off employees and reduce pension contributions. I think that if the city defaults and its finances are put into court, then we might lose the real reforms that have been achieved, and the city's firm commitment to achieve a balanced budget in 3 years. Ultimately this responsibility must be with the local government, not with Federal officials or Federal courts.

I would rather have seen a loan guarantee than a direct appropriation because I hate to set a precedent of providing Federal funds to a city even over a period of months to make up their cash shortfall—but I recognize that the direct appropriation gives much more control by allowing the releasing of funds on month-to-month basis, and on a carefully monitored basis. It also makes the granting of loans subject to the limit of the congressional budget and appropriations process.

If this decision could be made in perfect vacuum I would vote no, but when I consider the possible consequences to the financial markets and our national economy together with the possible cost to the Federal Government to maintain services and order for 8 million people in the event of default I came down on the side of voting for the President's bill.

The passage of this bill does not mean that New York City's problems are over or that they will not later go into default but it gives them a chance to continue to put their house in order and gives strong control to the Treasury to require them to continue a course of fiscal responsibility.

Everything New York City stands accused of could also be laid to the Federal Government. I recall when Jesus found the men of the village about to stone to death an adulteress and he asked Him to participate; He wrote in the sand, "Let he who has no guilt throw the first stone." When the mob left He told the adulteress to go and sin no more. Perhaps because of our own overspending we are having trouble throwing the first stone.

Mr. President, I ask unanimous consent that my letter of December 3 to Burns and his reply of December 4 printed in the Record following my remarks.

There being no objection, the material was ordered to be printed in the Record as follows:

S. 21310

12-6-75-N.Y. TIMES

BY LINDA GREENHOUSE
Special to The New York Times

ALBANY, Dec. 5—A bill offering enhanced legal protection for the trustees of the New York City employee pension funds passed the Legislature shortly before 4 o'clock this morning and was immediately signed into law by Governor Carey, who declared that the "massive, complex fiscal package to save New York City from default and bankruptcy is now in place."

With two hours to spare before a 6 A.M. deadline, the pension trustees, newly indemnified against liability for any losses that might result, then bought \$130 million worth of New York City bonds, the first of \$2.5 billion the five funds are scheduled to invest over the next three years.

Last-Minute Crisis

The Legislature recessed until Tuesday, when the Governor, in an effort to spur action on the state budget problem, intends to conduct a public briefing on his plan to close the budget gap. Mr. Carey's views on the size of the gap are well known, but he has not disclosed specific proposals for new taxes and budget cuts.

This morning's vote on the pension-trustee indemnification bill followed a long day and

night of confusion and tedium. As has so often happened during the city's long struggle to stay solvent, what had been expected to be a routine action metamorphosed at the last minute into a crisis, in this case a stalemate between the pension trustees and state officials over how far-reaching the new legal protection could be.

The bill that finally emerged accomplished the following:

¶Broadened the criteria the pension trustees can consider when making investments, to include the extent to which the investments maintain the city's fiscal health. Under common law, trustees are generally held to have a fiduciary responsibility only to seek a maximum return on investments without jeopardizing the principal.

¶Shifted the liability for any losses arising from the sale of the pension funds' assets to purchase bonds under the \$2.5 billion agreement from the trustees themselves to the City of New York.

¶Guaranteed that the assets of the pension funds would not be reachable by the city's creditors in the event of a city default.

¶Required that, if the city is ordered by a court to replace pension fund losses and does not have the cash on hand to do so, the City Comptroller

must direct into the fund the revenues from the city income tax—"to the extent not otherwise required by law, or for essential services as determined by the Emergency Financial Control Board."

Extra Security

This was the crucial language of the compromise. It allowed the pension trustees, who had originally sought state rather than city indemnification, to contend that they had gained some extra security beyond the requirement that the city make the pension funds "whole." Maintenance of pension benefits is now included along with police and fire protection as an essential city service.

But at the same time, the language carefully avoids giving the pension funds any kind of priority over other essential services in claiming the income tax revenues.

"The question is," one top Assembly aide explained this morning, "if you only have a dollar, do you give it to someone who is retired or to someone who depends on the city's ability to protect his life and property? That's the gut issue that we haven't resolved because we can't resolve it. Once you're in that situation, you're in a default and then you're in a Federal Court and

out of the Legislature's hands." Pension-fund representatives today rebutted the implication that the bill offered them only "cosmetic" benefits, saying that the financial integrity of the funds had been strengthened significantly.

The roots of the last-minute problem apparently lay in the haste with which state officials assembled final details of the \$6.8 billion city rescue plan to show to Ford Administration officials last week.

That plan noted that the pension-fund contributions were contingent on indemnification for the trustees in a form acceptable to them, but did not specify the form the indemnity would take.

The bill was ready by 11 last night, but legislators had to wait more than three hours for the City Council to request action formally. There was almost no debate once the bill reached the floor here. The margin in the Assembly was 107 to 32 and in the Senate, 48 to 2.

Warren M. Anderson, the Binghamton Republican who is Senate majority leader, offered at one point to explain the bill to the members. No one was interested. "Well, I don't want to tell you more than you want to know," he said, and resumed his seat.

CITY PAYROLL MET WITH PENSION CASH

200,000 Get Checks After Albany Enables Borrowing

By EDWARD RANZAL

At 4:15 A.M. yesterday, Comptroller Harrison J. Goldin ordered the release of \$100 million in payroll checks for 200,000 city employees, in time to get them to the workers by the time they were due.

The checks, dated yesterday and some of which are ordinarily distributed a day in advance, had been held up until the Legislature early yesterday morning passed legislation that paved the way for the city to borrow the cash it needed.

The cash was obtained from city pension funds, which had liquidated \$135 million worth of assets to purchase city serial bonds, which mature between June 1, 1977, and June 1, 1980, with an interest rate of 9 percent.

Before the purchase was completed, lawyers for the pension funds had received a ruling from the Internal Revenue Service, in Washington, that it was permissible to buy the city bonds, even though the city was the employer. Also, it was held up until the Legislature at 4 A.M. passed a bill

Senate Defeats Filibuster on City Aid

Continued From Page 1, Col. 8

overwhelming sentiment of this body, as the votes clearly will show," Senator Mansfield said.

"This is a domestic-aid program, and there are members opposed to this bill who have no compunction about voting foreign aid to nations on all five continents," Mr. Mansfield said. "They don't impose strict sanctions [on that aid]. But when it comes to our own people, we treat them like trash."

"What kind of people are we?" Senator Mansfield continued. "Give them \$150 billion overseas. No question. But when it comes to our own people, nothing but obstacles, nothing but roadblocks."

The legislation was managed on the Senate floor by Senator William Proxmire, Wisconsin Democrat and chairman of the Senate Banking Committee.

He gave a virtuoso performance in which he patiently argued, pleaded, cajoled, cited New York City fiscal statistics, cited austerity steps taken by the city and state, recited provisions of the pending legislation, and the testimony of bankers, economists and mayors who had warned of a possible national catastrophe that could result from a New York state

offered by the conservative bloc. The amendments were handily tabled, by votes of up to 83-6.

The conservatives, while conceding defeat today, were focusing on a future battle—Senate action, due Monday, on the supplemental appropriation that contains funds for the \$2.3 billion line of credit.

Although approval of the appropriation is considered certain, the conservatives hope to send New York City into bankruptcy by delaying Senate action beyond what they say is a Dec. 11 city-default deadline.

That deadline originally was set by city and state officials, who have since retracted it and said that default could occur at any time.

Allen Protests

The conservatives argued that the President's bill, a substitute for the Senate Banking Committee's \$4 billion loan-guarantee bill, had never received any Congressional consideration.

"This version of the bill has never been before a committee in either the House or Senate," said Senator James B. Allen, an Alabama Democrat, who had threatened a filibuster.

Senator Jacob K. Javits, New York Republican-Liberal, replied that "time and events have overtaken the Senate bill

the result of having 18 Senators represent half the population of the country.

"The Senate should face up to the problems of unfair and unjust treatment of the City of New York and the cities of the United States," Senator Ribicoff continued. "New York is being punished for the ills of the nation."

Senator Sam Nunn, a Georgia Democrat, was among several Senators who were unimpressed with the security provisions of the legislation, under which the Treasury Secretary can withhold future funds due the city if the loans are not repaid.

"Is there any kind of city property that the Federal Government can take a lien on?" Senator Nunn asked.

Senator Harry F. Byrd, Virginia independent told the Senate that "I am convinced that this is bad legislation, that it will create a dangerous precedent and become a bottomless pit for American tax dollars."

Terms of Bill

The defeated amendments included one by Senator Byrd to require the city to balance its budget by June 1977, which was tabled by a vote of 55-38, and an amendment by Senator Robert Taft Jr., Ohio Republican, to direct the Federal

Exp. 4.1



Public Law 94-236
94th Congress, 1st R. 11700
March 19, 1976

An Act

Relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any pension plan or trust which, on December 5, 1975, was a party to the amended and restated agreement of November 26, 1975, set forth on pages S21308, S21309, and S21310 of the Congressional Record published on such date, and any trust forming a part of such a plan, shall not be considered to fail to satisfy the requirements of section 401(a) of the Internal Revenue Code of 1954, and shall not be considered to have engaged in a prohibited transaction described in section 503(b) of such Code, merely because such plan or trust does any or all of the following:

New York,
Public employee
retirement
systems,

26 USC 401.

26 USC 503.

(1)(A) enters into such agreement or agrees to an amendment of such agreement;

(B) forbears from any act prohibited by such agreement;

(C) acquires or holds any obligation the acquisition or holding of which is provided for by such agreement;

(D) makes any election provided for by such agreement;

(E) executes a waiver of any requirement of such agreement;

(F) after the expiration of such agreement, holds any obligation acquired or held pursuant to such agreement; or

(G) performs any other act provided for by such agreement;

(2) on or after August 20, 1975, and before January 1, 1979, considers, for purposes of determining investments to be made by the plan or trust, the extent to which such investments will—

(A) maintain the ability of the city of New York—

(i) to make future contributions to the plan or trust, and

(ii) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such plan or trust, and

(B) protect the sources of funds to provide retirement benefits for members and beneficiaries of the plan or trust; or

(3) after December 31, 1978, considers, for purposes of determining whether to retain investments held on December 31, 1978, the factors enumerated in paragraph (2).

For purposes of paragraph (1), the acquisition or holding of any obligation of the Municipal Assistance Corporation for the city of New York on or after August 20, 1975, and before November 26, 1975, shall be considered an acquisition or holding provided for by such agreement.

(b) In the case of—

(1) any amendment to the agreement described in subsection

(a) which relates to the application of the factors set forth in subsection (a) to the requirements of section 401(a) or 503(b) of the Internal Revenue Code of 1954 and which is adopted after December 5, 1975, and

Exhibit K.1.

March 19, 1976

Waiver.

(2) any waiver of any requirement of the agreement by a plan or trust after December 31, 1975, such amendment or waiver shall take effect for purposes of subsection (a) on the date on which a copy of such amendment or waiver is submitted directly to the Secretary of the Treasury; except that, if the Secretary determines, not later than 30 days after such date of submission (or, if later, the date of the enactment of this Act) that the taking effect of such amendment or waiver for purposes of subsection (a) is inconsistent with the considerations set forth in subsection (a) (2), such amendment or waiver shall not be deemed to have been effective for any period for purposes of subsection (a). No amendment to the agreement which has the effect of extending the expiration date of the agreement to a date later than December 31, 1978, shall take effect for purposes of subsection (a).

Report to Secretary of the Treasury.

(c) The trustees of each pension plan or trust described in subsection (a) shall furnish a copy of the annual report filed by such plan or trust with the New York State Insurance Department for each fiscal year of the plan or trust beginning after June 30, 1975, and ending with the first fiscal year in which there are no obligations with respect to which subsection (a) applies, to the Secretary of the Treasury not later than 30 days after the date such report is filed with the New York State Insurance Department, and shall furnish such additional reports and other information as the Secretary of the Treasury may reasonably require. A copy of each such report shall be furnished by the Secretary of the Treasury to the chairman of the Committee on Ways and Means of the House of Representatives and the chairman of the Committee on Finance of the Senate.

Report to congressional committees.

Regulations.

(d) The Secretary of the Treasury or his delegate is authorized to prescribe such regulations as may be necessary to carry out the purposes of this Act.

Effective date.

(e) This Act shall be effective on and after August 20, 1975.

Approved March 19, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-851 (Comm. on Ways and Means),
CONGRESSIONAL RECORD, Vol. 122 (1976):
Mar. 1, considered and passed House.
Mar. 4, considered and passed Senate.

Exhibit K.2.

Notes taken by Al Kirshner on: Dec. 5, 1975 letter from
Internal Revenue Service
Dept. Treasury
Wash. DC 20224

Asst. Commissioner
Employer Plans & Exempt Organizations

Addressed to:
NYC Employees Retirement System
220 Church St.
NY NY 13

Teachers Retirement System
40 Worth St.
NY NY 13

By letter dated 12/4/75...you requested IRS to rule proposed purchase of NYC bonds by qualified trusts under Section 401(a) and exempt from taxation ~~under~~ by virtue of 501(a) will not result in a prohibited transaction under section 503(b)(1) of Code 1954 nor a violation of the "exclusive benefit rule" of section 401(a) of the Code.

Specifically you requested the Service to rule that
(1) NYC bond purchases will not constitute a prohibited transaction under 503(b)(1) and
(2) will not be deemed a diversion of assets under 401(a).
You have asked us to assume that Teachers Retirement System is a "just plan" under 414(d) of the Code.

IRS therefore

(1) OK's \$130 million dollar purchase.
(2) Service does not intend to rule: if additional purchases will result in violation of the exclusive benefit rule of 401(a) whether the four investment requisites set forth in Rev. Rule 69-494 are satisfied.

signed ALVIN D. LORIE
Asst. Commissioner

There was a similar letter from same to same re second purchase dated Dec. 13, 1975. Both letters read in office of Mr. King, Counsel to the City Controller, in Municipal Bldg.'

Exhibit L.

PRICES OF BONDS SHOW A DECLINE

Markets React to the Fed's
Moves to Drain Funds

By ALEXANDER R. HAMMER

The credit markets eased yesterday in reaction to Federal Reserve moves to drain funds from the system. Prices in both the government and corporate sectors opened slightly higher but then began weakening at noon when the Fed entered the market with temporary reserve-absorbing transactions. The four-day and seven-day reverse repurchase agreements were initiated when the rate of Federal funds, excess reserves commercial banks may lend one another, was quoted at 5 1/4 per cent.

In the United States Government area, short-term and intermediate bonds eased 1/4 to

New Bond Issues

UTILITY BONDS

	Orig. asked Price Cst.	Price Quote Chgs. Yield
A.T.R. 3 1/2% 107 1/2	100 1/2	97 1/2 8.89
Mt. St. 9 3/4% 115	100 1/2	102 1/2 9.42

INDUSTRIAL BONDS

Cent. Mt. 8 1/2% 105	100	93 1/2 8.77
Exxon 8 1/2% 1000	99 1/2	99 1/2 8.72

INTERMEDIATE ISSUES

March 7 1/2% 105	100	98 1/2 8.16
Exxon 8 05% 100	100 1/2	100 1/2 7.76

3/4 point while long-term bonds were off about 1/4 point.

Losses in the corporate market ranged from 1/4 point in long-term bonds to 1/4 to 3/4 in the short-term and intermediate securities.

In the corporate market, five New York City pension funds raised \$125-million by liquidating \$153.5 million face amount of older corporate bonds from their portfolios.

The funds auctioned the bonds to help meet the city's cash needs. However, the effectiveness of the awards was contingent on passage of an indemnification bill in Albany by the state legislature by 6 A.M. today.

Two underwriting groups divided the 35 separate issues being sold by the five pension funds. A group led by Salomon Brothers and Goldman, Sachs & Company won \$106.8 million of the corporate bonds by being high bidder for 23 of the issues. The remaining \$43.7 million was awarded to an underwriting team headed by the First Boston Corporation and Merrill Lynch, Pierce, Fenner & Smith, which submitted the best bids for the other 12 issues.

The specific dollar bids and additional details on the sale are not yet available, according to a spokesman for Harrison Goldin, Comptroller of New York City.

Control Board's Powers Are Upheld by Lefkowitz

By FRED FERRETTI

State Attorney General Louis J. Lefkowitz ruled yesterday that the Emergency Financial Control Board had the legal right "to review, control and supervise the formal management of the city," including the right of final review of contracts approved by the Board of Estimate.

The opinion, requested by Governor Carey, sustains the traditional right of the Board of Estimate over city contracts, but affirms that under the state law that created it the new control board has that right of final review.

"Any other interpretation would negate the legislative purpose to give E.F.C.B. final control of city expenditures," Mr. Lefkowitz wrote.

Thus, the Control Board exercises power not only over Mayor Beame but also over the Board of Estimate.

At an early morning meeting at City Hall between the Control Board and the Board of Estimate there was, according to participants, considerable friction over the eventual impact of the opinion until Mayor Beame and Borough President Percy E. Sutton of Manhattan suggested a compromise.

Informal Notification

This will call for the Control Board to let the Board of Estimate know informally, well before a scheduled vote, whether a contract violates fiscal guidelines.

However, though this would eliminate embarrassing confrontations between the two bodies, several Borough Presidents say they will press for a procedure of formal notification by the Control Board.

There were also the following other fiscal developments yesterday:

Comptroller Harrison J. Goldin sold \$181.2-million in corporate securities in the city's five pension fund portfolios to two syndicates headed by two brokerage houses, Merrill Lynch, Pierce, Fenner & Smith and Goldman Sachs, and realized \$145 million. This will be used to buy long-term city bonds as part of the city's long-range fiscal plan.

Neither the Governor nor State Comptroller Arthur Levitt were at the meeting of the two boards, but the Mayor and City Comptroller Goldin were. Albert V. Casey, chairman of American Airlines, and David Margolis, chairman of Colt In-

Law. The new arrangement between the Board of Estimate and the Control Board was tested immediately in a Board of Estimate session several hours after the meeting. At that session the Board of Estimate approved two contracts—\$250,000 to American Management Systems Inc., a managerial consultant, and \$350,000 to Touche Ross & Company, an accounting concern—for new procedures as required under the three-year financial plan.

Before the contracts were considered by the Board of Estimate, the Control Board let it be known, informally, that it favored them.

Though both were approved by votes of 20 to 2—Mr. Sutton abstaining each time and being counted as a "no" vote—the votes were over objections by Bronx Borough President Robert Abrams in particular, who noted that "since we are subject to penalties" under the Emergency Financial Control Board legislation if willful disregard of the financial plan guidelines is proven, "we have the right to get an opinion from the Control Board."

Mr. Abrams at one point stood up and said, "If I was the Attorney General I would have given a different opinion," whereupon the Mayor said, "Bob, are you still running for office?"

Mr. Abrams ran unsuccessfully against Mr. Lefkowitz last year.

Levitt Not Present

At the early morning City Hall meeting the Lefkowitz opinion was laid on the table by Herbert Elish, executive director of the Municipal Assistance Corporation, who has also been designated the administrator of the city's fiscal plan by Mr. Carey and who represented the Governor at the meeting.

Neither the Governor nor State Comptroller Arthur Levitt were at the meeting of the two boards, but the Mayor and City Comptroller Goldin were. Albert V. Casey, chairman of American Airlines, and David Margolis, chairman of Colt In-

Exhibit M.1.

BOND PRICES SLIP IN SLOW TRADING

City Notes Decline in Light
Swap for M.A.C. Bonds

By JOHN H. ALLAN

The bond market ended 1975 with a small decline in prices yesterday but many traders remained convinced that 1976 would bring a resumption of December's pronounced trend toward lower interest rates. The Federal Reserve once again pumped temporary reserves into the banking system, an action that reassured the bond market that the central bank is headed toward a somewhat easier monetary policy. Trading activity, preceding what for many is a four-day weekend, was almost at a standstill.

In the tax-exempt securities market, New York City notes declined somewhat following news that holders had exchanged only a little more than \$150 million of the \$1.6 billion that were eligible to be swapped for new 8 percent Municipal Assistance Corporation 10-year bonds. At the same time, prices on M.A.C. bonds rose slightly.

Both the decline in the city notes and the rise in the price of M.A.C. bonds could be traced to the results of the exchange offer. When it was over, the number of city notes still outstanding was larger than expected and the number of outstanding M.A.C. bonds was smaller.

As in any trading market, larger supply tends to push prices lower and a smaller supply bolsters prices if demand remains the same.

The New York City 9 1/2 percent notes that had been scheduled to mature Dec. 11 traded about 55 to 60 cents on the dollar, but very few notes changed hands, traders report.

The new M.A.C. 8's of 1986 were quoted at 67 bid, while older ones offered them for sale at 73 or 71, depending on the maturity of city notes for which they had been exchanged. On Tuesday, the M.A.C. 8's had been 55 bid. At their level yesterday, the new M.A.C. bonds yield about 10 percent to maturity.

Older M.A.C. bonds were unchanged in price yesterday. The 8's of 1985 were 78 bid, 80 asked, where they yielded 12.5 percent. The 9 1/4's of 1990 were 68 bid, 78 asked, where they yielded roughly 12.5 percent. And the 11's of 1983 were 100 bid, 101 asked, where they yielded about 10.80 percent.

TAX EXEMPT NEW YORK CITY General Obligation Bonds

We own and offer these bonds, subject to prior sale or change in price:

Amount	Coupon Rate	Maturity	Yield*	Approximate Price
\$85,000	4 1/4 %	1/1/77	17.00%	93.00
50,000	3.10	7/15/77	17.00	86.10
15,000	7.00	8/1/77	17.00	89.70
60,000	7.00	2/1/78	17.00	85.90
5,000	3 1/2	4/1/78	17.00	79.30
15,000	4 1/4	4/1/79	17.00	73.20
5,000	8.00	4/15/79	17.00	80.07
5,000	5.00	5/1/79	17.00	73.13
10,000	6.90	1/1/87		67.00
5,000	5 1/4	11/1/87		52.25
5,000	5 1/2	5/1/88		55.00
10,000	6.00	3/15/92		55.00
5,000	4.00	10/15/94		40.00

*Subject to capital gains tax

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SPECULATIVE*

*BUT WORTHY OF CONSIDERATION

NEW YORK CITY GENERAL OBLIGATION BONDS

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Amt	Description	Coupon	Maturity	Dollar Price
50,000	NYC	3.75	7-15-80	50
50,000	NYC	3.50	4-01-81	53 1/2
200,000	NYC	5.10	10-15-91	48 1/2

The above securities offer a wide range of yield to maturity (12.50-18.00%), current yields (6.35-10.30%), and the possibility of substantial capital appreciation.

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4/21/76

Exhibit M.2.

November 3, 1975

New York City, New York

The City has about come to the end of a long struggle during which it has staved off default time after time. The City's debt policy has proved to be disastrous in the face of a market which will not accommodate its short-term borrowing schedule. The Municipal Assistance Corporation was handed a job of meeting this schedule over a short period during which it was hoped that confidence in the City would be restored. The task proved impossible to accomplish, but its task of policing the City's financial management in the areas of accounting, financial reporting, and short-term debt issuance remains. The Emergency Finance Control Board was created to exercise stringent control over the City's budgetary procedures and particularly over its expenditure policies. Again, one of the purposes has been to help restore confidence in the City's financial practices to the degree needed for it to sell its own securities again. The Board's mandate is in process of being carried out, and it has provided budget outlines which over the next three years will eliminate the City's deficits and bring financial practices under control.

On top of maturing short-term debt in the next few months, the City faces the task of raising cash to meet seasonal shortfalls of revenues. Temporary arrangements are in place to meet \$270 million November maturities, but the \$470 million due in December is not now accounted for. It is this period which the restoration of confidence in the City was to enable it to cover by borrowing again on its own. Between now and the end of March, the City needs to raise nearly \$2.5 billion in short-term and other moneys to pay maturing obligations. Put another way, the Comptroller of the City has stated that "the City needs \$1.8 billion for the full period between October and June, of which \$1.1 billion is being provided by MAC. This leaves \$3.9 billion to be raised for the period December to June, in order to avoid default. If default takes place on debt service alone, the City still needs to raise \$1.0 billion from October through March—or \$1.2 billion from December through March—in order to pay remaining expenses."

The fact is that at this time neither MAC nor the Emergency Finance Control Board has, nor have they together, restored confidence in the City's finances to the degree that will enable it to enter the market with an issue of securities. On October 17, the City played out the drama of its cash shortage position. The validity of paychecks and the legitimate claims of noteholders were held in abeyance until arrangements were completed to provide cash to honor them. In the meantime, it was reported that the City received a court order to require it to meet payroll as a first charge on revenues that were available. This highly significant development is the most serious question raised about the first lien that debt holders are supposed to have.

The City does not have funds in sight to meet requirements. The Governor of the State and the Mayor of the City have stated that without a Federal guaranty the City will default on its obligations. The President of the United States has stated that he will veto any bill sent to him providing such assistance. We have therefore lowered our rating on the debt obligations of the City to **Caa**, including City guaranteed obligations of the New York City Housing Authority, the bonds of the New York City Transit Authority, and the bonds of the New York City Educational Construction Fund.

New York State

The State of New York has made its credit available for New York City through advances in aid financed by tax

anticipation borrowing and through issuance of revenue anticipation notes. With the credit market closed to the State, additional aid to the City or aid to the agencies does not now appear possible. The State is now acting to protect its own position. Of a total \$2,935,000,000 tax anticipation notes outstanding, the State will redeem for cash \$1,385,000,000 as they become due between now and January 30. Some part of the remaining \$1,600,000,000 due on March 31 will be rolled over, in an amount sufficient to cover the actual deficit. We are restoring the MIG 1 ratings on TANs due 11-19-75, 12-15-75, 12-30-75, and 1-30-76 in recognition of assurance by the State Comptroller that tax collections will be available to pay these notes. The rating on the TANs due 3-31-76 remains withdrawn because of the uncertainty of the market necessary for rollover.

Buffalo, New York

We are revising the rating on the general obligation bonds of the City of Buffalo from **Baa 1** to **Baa** to reflect the overall weakness in the City's debt management policies as well as its ongoing serious financial problems, stagnant tax base, high unemployment levels and increasing tax delinquencies.

Although total outstanding short-term debt of the City is relatively small compared with current revenues (approximately 11%), nevertheless, the constant use of this financing technique has created a very difficult situation for the City. This kind of debt policy, which requires the City to tap the capital markets repeatedly, is unsound. Because of ongoing financial and economic troubles, the City has had poor reception in attempts to market its short-term obligations, which creates potential difficulties for ensuring the prompt payment of its long-term obligations. The climate that now exists, which is creating uncertainty as to the applicability of the Constitutional first lien of the bondholder, is also distracting.

Buffalo Sewer Authority, New York

We are revising the rating on the Authority's prior lien revenue bonds, Series K through S, from **A 1** to **A**, and the rating on the Authority's sewer system revenue bonds (junior lien) from **Con. (Baa 1)** to **Con. (Baa)** to reflect the weak financial operations of the Authority. This is primarily indicated by the nearly 50% of its current revenues that are derived from rents based on the City's stagnant assessed valuation and the inadequacy of system net revenues to cover peak debt service requirements.

Yonkers, New York

We are revising the rating on the general obligation bonds of the City of Yonkers from **A** to **Baa** to reflect poor management practices for both debt and finances.

The City's short-term debt (composed of bond anticipation notes) accounts for nearly 50% of current revenues and is some \$7 million in excess of bonded debt. A portion of these BANs have been, repeatedly, issued for deficit funding purposes. The City must enter the market again, within the next few weeks, to fund some \$9 million of BANs. This unsound practice of heavy and frequent dependence on the capital market for short-term purposes creates a cash flow problem which exacerbates an already depressed current financial position. An accrued revenue deficit is again projected for the end of fiscal 1975, and the projected inability to realize any reduction in the deficit is related to potential shortfalls of State aid. As with Buffalo (and many other municipalities), the climate, which is now creating uncertainty as to the applicability of the Constitutional first lien of the bondholder, is also distracting.

Exhibit N. 1.

KEY TO MOODY'S BOND RATINGS

Aaa

Bonds which are rated Aaa are judged to be of the best quality. They carry the smallest degree of investment risk and are generally referred to as "gilt edge." Interest payments are protected by a large or by an exceptionally stable margin and principal is secure. While the various protective elements are likely to change, such changes as can be visualized are most unlikely to impair the fundamentally strong position of such issues.

Aa

Bonds which are rated Aa are judged to be of high quality by all standards. Together with the Aaa group they comprise what are generally known as high grade bonds. They are rated lower than the best bonds because margins of protection may not be as large as in Aaa securities or fluctuation of protective elements may be of greater amplitude or there may be other elements present which make the long term risks appear somewhat larger than in Aaa securities.

A

Bonds which are rated A possess many favorable investment attributes and are to be considered as upper medium grade obligations. Factors giving security to principal and interest are considered adequate but elements may be present which suggest a susceptibility to impairment sometime in the future. See General Note 1 below.

Baa

Bonds which are rated Baa are considered as medium grade obligations, i.e. they are neither highly protected nor poorly secured. Interest payments and principal security appear adequate for the present but certain protective elements may be lacking or may be characteristically unreliable over any great length of time. Such bonds lack outstanding investment characteristics and in fact have speculative characteristics as well. See General Note 1 below.

Ba

Bonds which are rated Ba are judged to have speculative elements; their future cannot be considered as well secured. Often the protection of interest and principal payments may be very moderate and thereby not well safeguarded during both good and bad times over the future. Uncertainty of position characterizes bonds in this class.

B

Bonds which are rated B generally lack characteristics of the desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small.

Caa

Bonds which are rated Caa are of poor standing. Such issues may be in default or there may be present elements of danger with respect to principal or interest.

Ca

Bonds which are rated Ca represent obligations which are speculative in a high degree. Such issues are often in default or have other marked shortcomings.

C

Bonds which are rated C are the lowest rated class of bonds and issues so rated can be regarded as having extremely poor prospects of ever attaining any real investment standing.

Con. (...)

Bonds for which the security depends upon the completion of some act or the fulfillment of some condition are rated conditionally. These are bonds secured by (a) earnings of projects under construction, (b) earnings of projects unseasoned in operating experience, (c) rentals which begin when facilities are completed, or (d) payments to which some other limiting condition attaches. Parenthetical rating denotes probable credit stature upon completion of construction or elimination of basis of condition.

General Notes (1) Those bonds in the A and Baa groups which Moody's believes possess the strongest investment attributes are designated by the symbols A1 and Baa1. Other A and Baa bonds comprise the balance of their respective groups. These ratings (1) designate the bonds which offer the maximum in security within their quality group, (2) designate bonds which can be bought for possible upgrading in quality and (3) additionally afford the investor an opportunity to gauge more precisely the relative attractiveness of offerings in the market place.

(2) Generally speaking, bonds in Moody's highest rating categories can be characterized as follows: Aaa obligations, their safety is an absolute that with the occasional exception of overpayment in a few specific instances, their market value is virtually immune to all but money market fluctuations. Aa bonds, their market value is virtually immune to all but money market fluctuations, with the occasional exception of overpayment in a few specific instances; A-rated bonds may be influenced to some degree by economic performance during a sustained period of depressed business conditions but during periods of prosperity A-rated bonds frequently move in parallel with Aaa and Aa obligations, with only occasional exception of overpayment in a few specific instances; Baa-rated are more apt to show a more pronounced reaction of and arise from occasional speculative factors applying to some bonds of this class. Baa issues will move in parallel with Aaa, Aa, and A offerings during periods of economic normalcy, except in instances of not necessarily passed to the business cycle. Baa-rated bonds are usually quite sensitive to short day economic cycles; Ca bonds reflect the market's concept of the probability and magnitude of a default. Ca bonds are speculative in high degree and usually indicate a small book value, and Ca-rated bonds appear to be hopelessly in default and usually have only a nominal book value.

(3) Unless otherwise noted, municipal ratings are for "General Obligation" bonds which are defined as validly issued and legally binding evidence of indebtedness secured by the full faith, credit and taxing powers of the issuer.

E. Hubert N.Y.

THE NEW YORK BANK FOR SAVINGS

1230 AVENUE OF THE AMERICAS, N.Y., N.Y. 10020

ARTHUR J. QUINN
CHAIRMAN OF THE BOARD &
CHIEF EXECUTIVE OFFICER

Dear Depositor:

I'm pleased to report that 1975 was a most successful year for The New York Bank for Savings. This despite uncertain economic conditions and the problems of New York City.

We passed the \$3 billion mark in assets and set a record for gross earnings. In the mutual tradition this permits us to continue to pay dividends and interest at the highest rates the law allows. These total payments to depositors in 1975 hit a record high. The balance of earnings, of course, increased our reserves to further strengthen the Bank.

We have fully cooperated in working towards a solution of the money problems of our home city and state. Our total investment in New York City obligations represents less than 1/4 of 1% of our total assets, all of which is in good standing.

New services were added. Namely, Direct Deposit of Social Security Checks. We are also expanding our range of choice of rates.

We move into the future with confidence and quality in what we do. We are convinced that our new services will benefit our depositors.

On behalf of all depositors,
a happy and

Top 20 Mutual Savings Banks in the United States

(In order of deposits as of July 1, 1976)

Rank	Bank	Total Deposits	
		July 1, 1976	July 1, 1975
1	Philadelphia Saving Fund Society.....	\$3,972,916,448	\$3,476,218,589
2	Bowery Savings Bank, New York.....	3,966,563,671	3,651,048,510
3	Dime Savings Bank of New York, Brooklyn.....	3,525,802,051	3,271,339,300
4	New York Bank for Savings.....	2,874,417,691	2,680,017,308
5	Dollar Savings Bank, Bronx.....	2,161,083,938	1,993,082,783
6	Emigrant Savings Bank, New York.....	2,108,946,386	1,944,929,709
7	Greenwich Savings Bank, New York.....	1,883,622,728	1,783,086,469
8	Williamsburgh Savings Bank, Brooklyn.....	1,821,427,132	1,668,023,754
9	Lincoln Savings Bank, Brooklyn.....	1,730,108,405	1,591,369,069
10	Buffalo Savings Bank.....	1,669,966,654	1,514,824,302
11	Howard Savings Bank, Newark.....	1,633,859,000	1,413,897,000
12	Dry Dock Savings Bank, New York.....	1,608,060,040	1,404,106,474
13	Western Saving Fund Society of Philadelphia.....	1,603,396,755	1,386,613,738
14	Washington Mutual Savings Bank, Seattle.....	1,538,142,707	1,443,537,095
15	Seamen's Bank for Savings, New York.....	1,511,547,290	1,375,708,645
16	Greater New York Savings Bank, Brooklyn.....	1,321,321,087	1,228,762,307
17	Erie County Savings Bank, Buffalo.....	1,296,854,713	1,161,189,771
18	East River Savings Bank, New York.....	1,268,737,879	1,128,518,649
19	Jamaica Savings Bank, Queens.....	1,238,193,454	1,161,943,508
20	Anchor Savings Bank, Brooklyn.....	1,232,492,272	959,513,270

Source: American Banker

The New York Times/Aug. 9, 1976

Exhibit "O"

A New Study Raises Total Of Bank-Held City Paper

Report by the Federal Reserve Evokes Charges That Ford Was Not Aware of Impact of a Default Here on U.S.

By MARTIN TOLCHIN
Special to The New York Times

1/11/76

WASHINGTON, Jan. 10—The Federal Reserve System reported today that holdings of New York City and state obligations by banks across the country were far greater than had been indicated in a previous study.

The report led to renewed Congressional charges that the Ford Administration did not realize the potential impact of a New York City default on the national economy at the time that it was formulating a policy of opposition to Federal intervention to avert a default.

The new study showed that 954 banks in 33 states hold \$6.491 billion in New York obligations, of which \$2.017 billion are city obligations, \$1.476 billion are state obligations and \$2.997 billion are state-agency obligations.

The study showed that New York City and state obligations made up more than 50 percent of the capital of 234 banks in 29 states, and between 20 and 50 percent of the capital of 718 banks in 33 states.

The Federal Reserve System's previous study, made as the fiscal crisis reached fever pitch last November, reported that 546 banks in 26 states held \$4.178 billion in New York obligations, of which \$1.793 billion were city obligations, \$1.389 billion were state obligations and \$994 million were state-agency obligations.

Earlier Study Cited

The previous study had showed that New York obligations made up more than 50 percent of the capital of 179 banks in 24 states, and 20 to 50 percent of the capital of 367 banks in 26 states.

Representative Benjamin S. Rosenthal said, "The new study means that at no time during the entire New York City fiscal crisis did the executive branch ever know the potential impact of a default by the city." Mr. Rosenthal, Democrat of Queens, is chairman of the Subcommittee on Commerce, Consumer and Monetary Affairs of the

Continued on Page 42, Column

THE NEW YORK TIMES, SUNDAY, JANUARY 11, 1976

New Study by U.S. Raises Total Of Bank-Held City Obligations

Continued From Page 1, Col. 3

Government Operations Committee.

"That impact would not have stopped at the Hudson River," added Mr. Rosenthal, who requested the study. "It was only when Arthur Burns began to smell this himself that he began to change the President's position." Dr. Arthur F. Burns is chairman of the Federal Reserve board.

President Ford ended his opposition to Federal aid on Nov. 26 and proposed legislation, enacted by Congress, that provided for short-term, seasonal loans to enable the city to avert a default.

Treasury Secretary William E. Simon, director of the Administration's line toward New York, said today that the Federal Reserve System had a "standby" plan to aid hard-pressed banks.

"In the event of default, securities do not go to zero," Mr. Simon said. "Securities decline and then you have a debt rescheduling. In reality, we have seen a New York City default. What is a moratorium if not default?"

The Secretary said that he had not seen the new study and added, "I'd have to very closely analyze what effect this would have as far as the liquidity of each institution, the basic solvency of each institution" is concerned.

"If solvency is impaired, if liquidity is impaired, there are any number of ways to handle this," Mr. Simon said.

The new study showed that 162 New York banks held a total of \$5.147 billion in New York obligations, of which \$1.513 billion were city obligations, \$2.5 billion were state obligations, and \$1.132 billion were state obligations.

"There are three or four major New York banks that probably would have gone under had there been a default," Mr. Rosenthal said.

New York obligations were long considered blue-chip investments that held the additional advantage of being tax-exempt, and so were prized by financial institutions.

Florida, the home of many retired New Yorkers, had the next-largest investment in New York obligations—123 banks with a total of \$226 million in New York obligations.

The study showed that Alabama has 45 banks with \$107 million in obligations; Pennsylvania, 40 banks with \$95 million, and Missouri, 43 banks with \$77 million.

The study was submitted by George W. Mitchell, vice chairman of the Federal Reserve System, who wrote, "In general, banks' holdings of New York obligations have presumably decreased as a result of the retirement of obligations which matured subsequent to the survey dates."

Earnings of Largest Bank Holding Companies

'The Fifty Largest COMMERCIAL BANKING COMPANIES

	ASSETS (\$000)
BankAmerica Corp. (San Francisco)	66,763,054
Citicorp (New York)	57,849,665
Chase Manhattan Corp. (New York)	41,413,555
Manufacturers Hanover Corp. (New York)	28,290,519
J.P. Morgan & Co. (New York)	25,832,406
Chemical New York Corp. (New York)	21,771,258
Bankers Trust New York Corp. (New York)	20,611,426

*As of December 31, 1975.

FORTUNE July 1976

177,769,000,000 \$1,702,800,000

6 LARGEST N.Y.C. BANKS
ASSETS: HOLDINGS N.Y.C. SECURITIES
\$61,100,000,000

Bank Holding Company	Deposits as of Dec. 31, 1975 (in billions)	Operating Earnings (in millions)				Provision for Loan Losses (in millions)		Holdings in N.Y.C. Related Securities (in million)
		4th Qtr. 1975	Percent Change from 1974	Year 1975	Percent Change from 1974	Year 1975	Percent Change from 1974	
BankAmerica Corp.	\$56.5	\$82.8	+ 9.8	\$301.7	+17.5	\$174.8	+65.1	N.A.
Citicorp	44.7	73.5	- 8.6	348.2	+11.2	327.1	+134.1	\$340.5
Chase Manhattan Corp.	33.9	19.2	-69.3	156.6	-14.0	312.4	+163.6	408.0
Manufacturers Hanover Corp.	23.5	27.9	-17.5	136.4	+ 7.4	86.7	+67.1	263.6
J.P. Morgan & Co.	19.9	49.9	+ 4.4	191.9	+ 7.1	96.6	+134.5	186.2
Chemical New York Corp.	19.4	22.4	-17.0	98.6	+ 7.3	140.9	+134.1	378.8
Bankers Trust Corp.	16.2	12.3	-41.4	63.2	-10.6	111.0	+62.5	125.7
Continental Illinois Corp.	15.3	30.1	+11.1	119.0	+24.1	75.0	+128.0	15.0
Western Bancorp.	15.1	17.2	-16.9	77.5	- 8.5	52.0	+34.7	4.0
First Chicago Corp.	14.2	24.6	-13.1	105.5	+ 0.7	118.5	+124.4	-

* Includes New York City notes and bonds and Municipal Assistance Corporation bonds.

** BankAmerica listed its holdings in such securities as less than 2 percent of its net equity, which would indicate about \$40 million.

1/20/76

The New York Times/Jan. 11, 1976

Section 401

It is held, therefore, that the qualification of the pension plan for the common-law employees of the partnership is adversely affected by the amendment permitting the continued increase in the vested interest of only those former employees who become partners.

26 CFR 1.401-1: Qualified pension, profit-sharing, and stock bonus plans.

A pension plan established by a labor union does not meet the qualification requirements of section 401(a) of the Code where several participants in the plan are not employees of the union.

Rev. Rul. 69-493

A labor union established a pension plan for the benefit of the employees of the union. The plan was not adopted by any other employer. Several of the participants in the plan were not employees of the union.

Held, the pension plan in this case does not meet the qualification requirements of section 401(a) of the Internal Revenue Code of 1954 since it covers persons who are not employees of the union. See section 1.401-1(a)(3)(ii) of the Income Tax Regulations which provides that for a trust to be qualified under section 401(a) of the Code it must be part of a pension, profit-sharing, or stock bonus plan established by an employer for the exclusive benefit of his employees or their beneficiaries.

26 CFR 1.401-1: Qualified pension, profit-sharing, and stock bonus plans.

Requirements that must be complied with where funds of an exempt employees' trust are to be invested in the stock or securities of the employer corporation; PS No. 49 superseded.

Rev. Rul. 69-494¹

The purpose of this Revenue Ruling is to update and restate, under the current statute and regulations, the posi-

tion set forth in PS No. 49, dated June 16, 1945, relating to the requirements an exempt employees' trust must comply with in order to invest funds in the stock or securities of an employer corporation.

An exempt employees' trust maintained by a corporate employer invests trust funds in the stock and securities of the employer. These investments are permitted under the trust instrument and under local law.

Section 1.401-1(b)(5)(i) of the Income Tax Regulations states that no specific limitations are provided in section 401(a) of the Code with respect to investments that may be made by the trustees of a trust qualifying under section 401(a). Generally, the contributions may be used by the trustees to purchase any investments permitted by the trust agreement to the extent allowed by local law. However, such a trust will be subject to tax under section 511 of the Code with respect to any "unrelated business taxable income" (as defined in section 512) realized by it from its investments. Furthermore, the tax-exempt status of the trust will be forfeited if the investments made by the trustees constitute "prohibited transactions" within the meaning of section 503 of the Code. See also the regulations under those sections.

Section 1.401-1(b)(5)(ii) of the regulations provides that, where trust funds are invested in stock or securities of the employer or other person described in section 503 of the Code, full disclosure must be made of the reasons for such arrangement and the conditions under which such investments are made in order that a determination may be made whether the trust serves any purpose other than constituting part of a plan for the exclusive benefit of employees. The trustee shall report any of such investments on the return that it is required to file and shall with respect to any such investment furnish the information required by such return.

Section 1.6033-1(a)(3) of the regulations provides that every employees'

trust described in section 401(a) of the Code and exempt from Federal income taxation under section 501(a) shall file an annual return on Form 990-P, including the information required by section 1.401-1 of the regulations.

The primary purpose of benefiting employees or their beneficiaries must be maintained with respect to investments of the trust funds as well as with respect to other activities of the trust. This requirement, however, does not prevent others from also deriving some benefit from a transaction with the trust. For example, a sale of securities at a profit benefits the seller, but if the purchase price is not in excess of the fair market value of the securities at the time of sale and the applicable investment requisites have been met, the investment is consistent with the exclusive-benefit-of-employees requirement. These requisites are: (1) the cost must not exceed fair market value at time of purchase; (2) a fair return commensurate with the prevailing rate must be provided; (3) sufficient liquidity must be maintained to permit distributions in accordance with the terms of the plan, and (4) the safeguards and diversity that a prudent investor would adhere to must be present. However, the requirement set forth in item (2) with respect to a fair return is not applicable to obligatory investments in employer securities in the case of a stock bonus plan. See Rev. Rul. 69-65, C.B. 1969-1, 114. Upon compliance with these requisites, if the trust instrument and local law permit investments in the stock or securities of the employer, such investments are not deemed to be inconsistent with the purposes of section 401(a) of the Code.

In view of the foregoing, it is concluded that the trustee in this case must notify the District Director of Internal Revenue of the investment of trust funds in the stock and securities of the employer so that a determination may be made whether the trust serves any purpose other than constituting a plan for the exclusive benefit of employees. This notification is to be made as part of the annual information return, Form

¹ Prepared pursuant to Rev. Proc. 67-6, C.B. 1967-1, 576.

Subject G.1.

come or corpus, without the receipt of adequate security and a reasonable rate of interest to the employer-grantor of the trust.

Section 1.503(c)-1(b)(1) of the Income Tax Regulations defines the term "adequate security" as something in addition to and supporting a promise to pay, which is so pledged to the organization that it may be sold, foreclosed upon, or otherwise disposed of in default of repayment of the loan, the value and liquidity of which security is such that it may reasonably be anticipated that loss of principal or interest will not result from the loan.

In this case, the pledge of the savings account funds, as evidenced by the delivery of the savings account passbook to the escrow agent and the execution of the escrow agreement, is something in addition to and supporting the promise to pay, within the meaning of section 1.503(c)-1(b)(1) of the regulations. Furthermore, possession of the passbook and the escrow agreement between the corporation officer, the savings bank, and the escrow agent invests the escrow agent with the necessary powers under the banking laws of the jurisdiction to withdraw funds from the savings account in the event of default on the note. In addition, the funds in the savings account are sufficient to cover the loan principal and interest, plus any reasonable costs of collection, in the event of default on the loan.

Accordingly, it is held that the transaction in this case was not a prohibited transaction under section 503(c)(1) of the Code.

26 CFR 1.503(c)-1: Prohibited transactions.
(Also Section 401; 1.401-1.)

A loan by an exempt employees' trust to its grantor, initially secured by the grantor-corporation's general assets and 18 months later also secured by the principal stockholder's unconditional guarantee for payment was without adequate security and constituted a prohibited transaction.

Rev. Rul. 70-131

Advice has been requested whether a loan made by an exempt employees' trust under the circumstances described below constitutes a prohibited transaction within the meaning of section 503(c)(1) of the Internal Revenue Code of 1954 (redesignated as section 503(b)(1) by the Tax Reform Act of 1969, Public Law 91-172 C.B. 1969 3, 10).

An exempt employees' trust made a loan to the grantor-corporation evidenced by a debenture bearing a reasonable rate of interest. This was the only such debenture issued.

The initial security for the loan consisted only of the corporation's general assets. However, approximately 18 months after the loan was made, the principal shareholder of the corporation executed an unconditional guarantee to pay the principal and interest on the debenture in the event of default by the corporation. The guarantor's net worth is adequate to support his guarantee and, under the laws of the applicable jurisdiction, the guarantee is similar in legal force and effect to an accommodation endorsement.

Section 503(c)(1) of the Code includes as a "prohibited transaction" any transaction in which a qualified employees' trust lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to the employer-grantor of the trust.

Section 1.503(c)-1(b)(1) of the Income Tax Regulations defines the term "adequate security" as something in addition to and supporting a promise to pay, which is so pledged to the organization that it may be sold, foreclosed upon, or otherwise disposed of in default of repayment of the loan, the value and liquidity of which security is such that it may reasonably be anticipated that loss of principal or interest will not result from the loan.

Revenue Ruling 66-324, C.B. 1966-2, 230, holds that pledged property, to constitute adequate security within the

meaning of section 1.503(c)-1(b)(1) of the regulations, must be specifically identifiable. In the instant case, the pledge of the general assets of the corporation, rather than specific property, was not adequate security for the loan.

Section 1.503(c)-1(b)(1) of the regulations also provides that accommodation endorsements of those financially capable of meeting the indebtedness may constitute adequate security for a loan to persons or organizations described in section 503(c) of the Code.

In this case, the unconditional guarantee is of similar legal force and effect to an accommodation endorsement and would, if timely made, constitute adequate security within the meaning of section 503(c)(1) of the Code since, by guaranteeing the corporation's obligation, the guarantor made his personal and private assets subject to attachment in satisfaction of the loan in the event of the corporation's default and since his net worth was adequate to support his guarantee.

However, the guarantee, in this case, was not executed until approximately 18 months after the loan transaction occurred and, thus, could not be considered security for the loan at the time the loan was made.

Accordingly, it is held that the loan by the exempt employees' trust was a prohibited transaction within the meaning of section 503(c)(1) of the Code.

Part II.—Private Foundations

Section 508—Special Rules With Respect to Section 501(c)(3) Organizations

Two samples of governing instruments of private foundations provide a guide for determining whether they meet the requirements of section 508(e) of the Code.

Rev. Rul. 70-270

Advice has been requested whether the governing instrument provisions set out in the two situations below meet

Exhibit Q. 2.

(2) **Taxable years affected.** - An organization described in section 501(c) (17) or (18) or paragraph (1) (B) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(b) **Prohibited transactions.** - For purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section --

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c) (4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(c) **Future status of organizations denied exemption.** Any organization described in section 501(c) (17) or (18) or subsection (a) (1) (B) which is denied exemption under section 501(a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary or his delegate, file claim for exemption, and if the Secretary or his delegate, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

(d) **Special rule for loans.** For purposes of the application of subsection (b) (1), in the case of a loan by a trust described in section 401(a), the following rules shall apply with respect to a loan made before March 1, 1954.

E. Robert Q.3.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

4/17/77 CAG:JSC

B-185522

To the President of the Senate and the
Speaker of the House of Representatives

This report assesses New York City's long-term fiscal and economic prospects. It is being released concurrently with our report entitled "Assessment of New York City's Performance and Prospects Under Its 3-Year Emergency Plan."

✓✓ The main conclusions of this report are that:

- The rapid deterioration in the City's fiscal and economic base is the root of the City's problems.
- The City will continue to find it difficult to cut expenditures.
- Unless there are major State and Federal policy shifts, 1977-85 will be an extremely difficult period for the City, one that could be aggravated by national recession or inflation.
- Declaring bankruptcy will not solve the City's problems.
- Better budgetary and fiscal information on cities is needed, and the Federal Government should explore ways to improve the generation of information for better decisionmaking.

A number of Federal policy alternatives could be implemented to alleviate long-term decline in the older urban centers and to counteract the short-term swings in national economic activity that exacerbate the cities' problems.

The contents of this report have been discussed with City and State officials, and their comments were considered in preparing it.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), the Accounting and Auditing Act of 1950 (31 U.S.C. 67), and the New York City Seasonal Loan Act (P.L. 94-143).

Detailed assumptions underlying these revenue projections are contained in appendix II. In general, these projections depend upon inflationary, employment, demographic, and other social and economic factors. The revenue projections are presented in Table 7 below and in Figures 1 and 2.

City expenditures

A problem in predicting City expenditures after 1978 is that the actual level of expenditures for 1978 is not known with any degree of certainty at this time. According to the City's 3-Year Financial Plan, the 1978 budget expenditures will be about \$12 billion. We have based our projections on that figure. But, if the City is unable to cut its expenditures to that level by 1978, the projections would have to be adjusted upward.

The City's expense budget is made up a large number of programs, and the composition and size of that budget after 1978 depend upon a multitude of budget decisions as well as other factors. Thus, innumerable projections of expenditures could be made. We have limited our projection of expenditures for the period to two, which are based upon alternative economic conditions (specifically, the inflationary factor) that might prevail at that time. These projections are intended to be illustrative, not definitive, but they indicate the general levels of post-1978 City expenditures before administrative actions would be taken to adjust the totals.

These projections of City revenues and expenditures are depicted in Figures 1 and 2. Under the best circumstances and starting with a balanced budget in 1978, the City would have a surplus in fiscal 1979 and 1980. In 1981, it would face a deficit of \$175 million which would grow to almost \$1.5 billion by 1985. Pinpointing the exact magnitude of the gap is impossible, but these projections indicate that the City will likely be under continued financial stress for years to come. If the City cannot balance its budget by fiscal 1978, the post-1978 period would bring larger budget gaps.

The dependence of any City budget gap on the national economy is manifest. If the national economy were to experience cycles of unemployment accompanied by inflation, the City's budgetary situation would be much worse. These economic factors are far beyond the control of the City or

the State. The projections indicate that the City will undergo sustained financial pressures and that the long-run situation may be largely outside the City's own control. The next chapter discusses policy options open to the City.

Table 7

Projections of New York City Budget: 1979 - 1985

Sustained Growth Projections

<u>Year</u>	<u>Expenditures</u>	<u>Revenues</u>	<u>Budget gap</u>
<u>(billions)</u>			
1979	\$12.531	\$12.825	\$0.294
1980	13.040	13.103	.063
1981	13.549	13.374	-.175
1982	14.076	13.660	-.416
1983	14.589	13.959	-.630
1984	15.098	14.249	-.849
1985	15.598	14.553	-1.045

Cyclical Projections

<u>Year</u>	<u>Expenditures</u>	<u>Revenues</u>	<u>Budget gap</u>
<u>(billions)</u>			
1979	\$12.652	\$12.846	\$0.194
1980	13.228	13.164	-.064
1981	13.761	13.489	-.272
1982	14.360	13.760	-.600
1983	14.995	14.113	-.882
1984	15.618	14.505	-1.113
1985	16.354	14.859	-1.495

of Housing and Urban Development rejected using the money to cover City- and State-financed public housing operating deficits (which would be the effect of the City's proposal) because the proposal did not meet the full intentions of the program.

COLLECTIVE BARGAINING

A recurring theme in the discussion of the City confronting its financial situation is that the City may be able to reduce expenditures by reducing the number of people on its payroll. Cutbacks in personnel are always a City or agency alternative, and much of the media coverage has focused on the City's efforts to reduce the number of City workers.

This policy of employment cutbacks together with the wage freeze announced by EFCB marks a new phase in City labor-management relations. Both of these cost-cutting strategies run counter to union and worker interests. In the absence of other factors, attempts to drastically reduce the work force and to eliminate wage increases would almost certainly be met by fierce union resistance and possibly by illegal strikes.

However, except for problems with hospital workers and some earlier protest meetings, the situation is notable for the lack of such reactions. Several other factors are, of course, influencing the situation. Perhaps the most important is a public perception that the City's work force is too large--a perception that would weaken public support in the event of a strike. Secondly, the unions have voted to allow the pension funds board to buy several billion dollars of City municipal bonds. This complicates the usual bargaining relationship between the union and the City. The union must consider the impact of its collective bargaining actions on the safety of the pension board investments, which in turn affect the interests of current and future pensioners.

However, this situation also gives the unions a new bargaining tool, in that their refusal to buy more bonds could intensify the financial pressure on the City. In addition, the pension board's creditor status could give it a pivotal position in any bankruptcy situation. In the event of bankruptcy, the union representatives to the boards would have to agree to any court plan of reorganization. Thus, having the unions authorizing the pension board's purchases of City municipal bonds should be viewed as a mixed blessing by the City's management. It may help

FISCAL OUTLOOK HELD GRIM FOR NEW YORK

Study for Congress Finds Economic Base in City Continuing to Erode

Special to The New York Times

WASHINGTON, April 4—The General Accounting Office reported to Congress today that New York City's fiscal and economic base was continuing to deteriorate and that prospects for halting the trend "are not bright." It cited burdensome taxes and declining employment.

Because of the economic decline and continuing "uncertainties," the office said, the city may "fall short" of its goal of having a balanced budget by June 30, 1978.

The grim summary of the city's financial situation followed Congressionally ordered studies of the city's three-year emergency financial plan and of its fiscal outlook to 1985.

Budget Officials Disagree

In New York, budget officials sharply disagreed with the study's conclusion that the city would not be able to balance its budget by the next fiscal year. But they did agree with some of its findings on the city's long-term financial difficulties.

As an arm of Congress, the accounting office, headed by Comptroller General Elmer B. Staats, serves as a fiscal watchdog and also makes in-depth policy examinations. In three long reports to Congress, based on a look at New York City's economic and budgetary trends since 1960, the office made the following major conclusions:

¶ Because of the continuing deterioration of its economic base, the city, under the best of circumstances, will face extraordinary financial pressures in the late 1970's and in the 1980's.

¶ Declaring municipal bankruptcy will not solve the city's problems.

¶ The city will continue to find it difficult to cut expenditures, because many of the

Fiscal Outlook for New York City Is Found Grim

Continued From Page 1

so-called "easier" cuts have been made. Very large expenditures in the budget are mandated by long-term contractual obligations (pensions and debt service) or by Federal and state programs (welfare and Medicaid, for example).

¶ Further cuts in municipal services could spur more middle-class people — and jobs — to leave the city. That flight during the 1960's and the 1970's was one of the main reasons for the city's current plight.

¶ If the Congress finds that Federal considerations justify further assistance to the city—seasonal loans, "targeted" aid or guaranteed loans, for example—the conditions of the aid should be "stringent."

'Difficult Period'

In suggesting several ways in which the Federal Government could help, the accounting office seemed to agree with recent statements by Treasury Secretary W. Michael Blumenthal Jr. that they should be in the form of overall aid to troubled cities and not to New York alone.

Barring major policy shifts at the state and Federal levels, the study said, the city faces an "extremely difficult period" in the next decade.

Among the ways of easing the city's burden that were mentioned in the report were welfare changes that would relieve the city of any payments, a state takeover of the City University, full regionalization of the transportation system, a special Federal program of aid to cities that have financial problems, a substantial increase in the Federal share of public education and housing costs, and the directing of existing aid programs to hard-hit communities.

The G.A.O. studies were ordered in 1975, when Congress approved the three-year "seasonal-aid" program for New York City to tide the city over cash shortages. Under the program, the city has a "revolving credit," or "charge account," with the Federal Government that allows it to draw down as much as \$2.3 billion in a fiscal year in which cash is short, but the money must be repaid at the year's end.

The program expires June 30, 1978, and the Carter Administration has indi-

cated that it might be agreeable to extending it. But an even greater need for aid is likely, according to the accounting office's studies. The reports spoke of Federal guarantees of city loans as a last resort and emphasized that the loans should not be easy enough to obtain as to become a permanent "crutch."

Dennis J. Dugan, associate director of the accounting office, said today: "Our concern is that we don't want the city eating up a lot of guaranteed loans with no concern for putting its house in order or moving in the right direction toward revitalizing the economy. The interest rate ought to be the same that the city would get if it could enter the regular bond market."

The summary of the city's performance

under the three-year emergency financial plan said: "Although New York City has made progress toward the goals it must meet by June 30, 1978, uncertainties exist which indicate it may fall short of its target. The outlook points to a continuing crisis for some years to come and the city may seek further help."

The G.A.O. cited the following negative factors about New York City:

¶ It has the heaviest tax load for residents and businesses of any "jurisdiction" in the country.

¶ It has twice as many municipal workers per capita as its surrounding suburbs and has traditionally paid them better.

¶ During the 1960's, private-sector employment in the city grew only 2 percent. In the nation, it grew 27 percent. In the same period, employment in manufacturing rose by 7 percent in the country, but declined in the city by 19 percent.

¶ The city lost 180,000 jobs in the 1960's and 468,000 jobs since 1970.

¶ The city's population decreased by 327,200 between 1970 and 1975. "Since those who migrate are younger, better educated, and more highly paid than those who remain behind," the accounting office said, "the city has been left with an increasing proportion of households which require public assistance." High taxes "have probably accelerated the rate of movement to the South and Southwest."

With such negative factors, the city is harder hit than the nation at large by both recession and inflation, the G.A.O. said. It said the city also had difficulties in cutting its budget because of independent boards operating within the city government and because of "general obligations to the public to maintain an orderly environment."

In New York, Donald D. Kummerfeld, the city's Budget Director, spoke on behalf of Mayor Beame. He took issue with the "considerable doubts" expressed by the G.A.O. on the city's ability to balance its budget in the next fiscal year, which starts July 1.

"We're going to surprise them," Mr. Kummerfeld said.

Of the G.A.O.'s description of the city's long-term economic prospects, Mr. Kummerfeld said, "We thought they were somewhat more pessimistic than we were."

Stephen Berger, the executive director of the Emergency Financial Control Board, said the report on the city's short-term prospects was "so dated it probably shouldn't have been released in its present form."

"That report doesn't take into account the fact that the 1978 budget is now starting to shape up," he said. "The long-term report is constructive. I don't agree with all its conclusions, but it makes a lot of sense."

In separate interviews, Mr. Berger and Mr. Kummerfeld both took the view that the report on the city's long-term prospects described problems common to all the country's older cities.

"It will help create a dialogue," Mr. Berger said.

Mr. Kummerfeld emphasized that he had not seen the final G.A.O. report, but only a draft that was sent to city officials last January.

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SECURITIES AND EXCHANGE COMMISSION
STAFF REPORT

ON

TRANSACTIONS IN SECURITIES OF THE
CITY OF NEW YORK

SUBCOMMITTEE ON ECONOMIC STABILIZATION
OF THE
COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

95th Congress, First Session



AUGUST 1977

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G. PENSION FUND TRANSACTIONS

"... [D]espite the false rumors you may have heard, all five City pension systems are actuarially sound. The formulae governing the funding of the five pension systems are established, implemented and regulated in your interest.

This is implicit in the law. Your pensions are protected. They are safe.

As you know, I, as City Comptroller, am a member of the Board of Trustees, of each pension system. Each system (and the law) has delegated to me the responsibility of investing the funds in that system.

... I want to leave you again with the flat statement that all five City pension systems are safe and sound." 1/

1. Background

New York City maintains a number of pension systems for its employees and employees of various independent agencies. The main systems are the following: 2/

- a. The New York City's Employees' Retirement System;
- b. The Teachers' Retirement System;
- c. The Board of Education Retirement System;
- d. The Police Pension Funds;
- e. The New York Fire Department Pension Fund.

The City's annual expenditures for pensions are substantial. The temporary Commission on City Finances has estimated that the City will expend \$1 billion

1/ Address by Comptroller Abraham D. Beame to Annual Meeting of N.Y.C. Civil Service Retired Employee Association, Tuesday, April 3, 1973 (delivered by a representative of the Comptroller).

2/ Report of Permanent Commission on Public Employee Pension and Retirement Systems ("Permanent Commission"), State of New York Executive Department, March, 1975.

SEC. CITATION 1.

6. Use of Pension Fund Assets to Purchase City Securities

In a speech in May of 1976, Comptroller Goldin stated:

With a commitment to invest \$2.53 billion of pension fund assets in City obligations, the five retirement systems are now well on the way to becoming the City's major creditors. The survival and soundness of the City therefore become matters of profound concern to both the active and retired members of the systems and to the union officials who represent such members as trustees of the funds. 1/

At the December 17, 1974 CTDM meeting, Mayor Beame and Comptroller Goldin met with various representatives of several securities dealers. At the conclusion of this meeting, the City announced that it intended to curtail its public borrowing for the first six months of 1975. At that time Mr. Goldin conceded that

the large supply of city bonds and notes overhanging the market was depressing prices and discouraging potential purchasers. While the City's obligations continue to offer absolute security to investors, that large supply of such securities requires steps to curtail further borrowing to the maximum possible extent. 2/

It was further indicated by City officials that part of the curtailed borrowing plan was to be accomplished by limited investments by City pension funds in City securities. 3/

In a letter to Comptroller Goldin, dated December 12, 1974, Mayor Beame asked that the the trustees of the City's pension plans adopt a policy of acquiring obligations of the City for their portfolios. In this letter, Mayor Beame indicated the following:

- 1/ Address of New York City Comptroller Harrison J. Goldin at Annual Conference of Municipal Finance Officers, Tuesday May 4, 1976.
- 2/ Wall Street Journal, December 18, 1974 "New York City Slashes Public Debt Plans for First Half 'After Issues' Poor Showing."
- 3/ Id. It is instructive to compare the minutes of the CTDM meeting, attached as Appendix A, with Comptroller Goldin's Press Release of the same date, attached as Appendix B.

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I would, therefore, urge that the Investment Advisors to the Pension Funds be requested to develop a program to include the purchases of City obligations with the normal cash flow in the Pension Systems and from switches of securities now in the fixed income portfolios, using the proceeds for the purchase of City of New York obligations.

This temporary measure, during this unusual period, would also serve as a significant expression of confidence in the City of New York by its own employees. 1/

Thus, the policy of avoiding pension fund investments in City securities was abandoned. Increasingly, as the fiscal crisis intensified, and access by the City to the securities markets was restricted, the City sold its securities to its own pension funds. These purchases were made in extremely large amounts.

At the time of these purchases of City securities, the City's underwriters were balking at taking any further securities for their own account. As the debt markets progressively closed to the City, Pension Funds increased their investments in City Securities despite the risks increasingly evident in such investments. In 1973, the pension funds had only nominal holdings in City securities. By the end of fiscal 1977, it is estimated that 35% of all pension fund assets was invested in City obligations.

The rationale advanced to justify the sale of City securities to pension funds is that such sales ease the large borrowing costs that would otherwise be incurred by the City, and do "not deprive people of money that

- 1/ Letter from Mayor Beame to Comptroller Goldin, December 12, 1974.

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could be utilized for essential services." 1/ This justification, however, ignores the interests of the pension funds' beneficiaries whom the Mayor, the Comptroller and the Board of Trustees of each fund are pledged to protect. This is even more critical since the non-taxable pension funds' yields from City tax-exempt securities, in general, are significantly less than that obtainable from "taxable" corporate issues of similar quality. Moreover, the increased use of pension fund assets to support the City's securities helped mask the City's deep-seated financing problems.

The extent to which the sound investment objectives of the pension plans were neglected in favor of the expedient interests of the City is demonstrated by a memorandum dated June 30, 1975 from Steven Clifford to Harrison J. Goldin. In discussing a proposed financial plan for the City, the memorandum specifies two possible uses of pension fund assets:

Pension Fund - New Purchase

Liquidating a portion of their current portfolios, the pension funds can obtain up to \$630 million in cash. This should be invested in City notes rather than M.A.C. bonds, since the limited debt authority of the latter should be reserved for public issues.

Pension Fund - Reverse Repos

The Cash needs of the pension funds and the adverse budgetary impact of further portfolio liquidation will prevent additional long-term commitments to (the) City, secured by June revenues. In this manner, the City can shift cash inflows from June, when it expects a surplus, to September and January, when it expects deficits. The pension funds can raise the

1/ Statement of Comptroller Harrison J. Goldin to the City Council, State Legislative Committee, City Hall, City of New York, February 21, 1975.

cash without selling securities, through a bank loan secured by pension fund securities. 1/

7. Conflicts of Interest Concerning the City's Pension Funds

Individuals who manage and control pension funds are fiduciaries of the highest degree. The enormous size and scope of the City pension plans make it absolutely essential that these funds be soundly administered. They must be operated with unquestioned prudence and integrity. It is of utmost importance that the pension plans be managed for the exclusive benefit of the plan's beneficiaries.

Throughout the City's fiscal crisis, fiduciaries, such as the Mayor and the Comptroller, found themselves in untenable positions of conflict. There was a tension between keeping the City afloat and prudent administration of the City's pension funds. Although the Comptroller exercised control

1/ In addition to direct purchases of City securities by pension funds, assets of the funds were invested in New York City "Mortgage Loans In-Rem." In 1974, Peat Marwick & Mitchell estimated that the City's Pension Plan held:

Approximately 800 to 900 mortgages owned by various retirement systems which have been given by the City following a public auction sale on previously foreclosed properties.

In addition, Peat, Marwick & Mitchell indicated that:

There are significant principal and interest arrearages dating back three years on many of these loans, with the arrearages on at least two loans dating back to the late 1960's. Actions to foreclose and/or sell these mortgages back to New York City should be taken so that the monies can be obtained and reinvested at higher current rates."

See, Examination of Certain Assets of Various Retirement and Pension Systems Held By or Under the Custody of the Comptroller of the City of New York, March 31, 1974.

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over the pension fund assets, he acted with the knowledge and approval of the Mayor. The Mayor knew of the uses being made of the pension fund assets and encouraged the pension funds to accelerate their purchases of City obligations. As the Mayor or his representative acts as a Trustee for four of the five pension funds of the City, he must share responsibility with the Comptroller for the use of their assets.

In a very real sense, the City's pension plans became the last repository of any sizeable amount of funds for the City to draw upon during its fiscal crisis. The City's continued access to public markets was in jeopardy, the large financial institutions were threatening to withdraw further support of the City, and the City's cash needs were escalating. Faced with these crises, the City turned to its last source of funds, the pension funds, which were freely utilized in an attempt to shore up the City's finances. At the time, the Mayor and the Comptroller were aware of the risks entailed in an investment in City securities, ^{1/} and of the weakened state of the pension funds themselves. ^{2/}

The ability of the Mayor and the Comptroller to exercise investment control over pension fund assets is a fundamental problem in the structure of the City's pension funds. Indeed, the impossibility of managing the pension plans solely in the interests of the pension fund beneficiaries was recognized before the crisis began. For example, in a November, 1973 Report on the Office of the Comptroller of the City of New York, prepared

^{1/} See Section IV. C., supra.

^{2/} Supra, at 12.

by the State Charter Revision Commission Staff, there is a discussion of the "Role Conflict" of the Comptroller. Enumerated among the "numerous conflicts inherent between the Comptroller's various powers and responsibilities" is:

Debt management conflicts with investment management; he invests in his own bonds. ^{1/}

The report later states:

Other roles of the Comptroller conflict with his duties. For example, as debt manager, he is unable to make an independent evaluation of New York securities. ^{2/}

Such organizational problems may be at the root of the questionable decisions which were made in the investing of very large sums of the City's pension fund assets in the City's securities. The techniques used to defer required City contributions directly affected the pension plans and encouraged liberalization of benefits without an adequate understanding by the public of the real costs of such increases.

^{1/} State Charter Revision Commission, Report on the Office of the Comptroller of the City of New York, November, 1973, p. 29.

^{2/} Id., at 47.

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